

Sec.	
1113.	Fees.
1114.	Remedies; infringement; innocent infringement by printers and publishers.
1115.	Registration on principal register as evidence of exclusive right to use mark; defenses.
1116.	Injunctive relief.
1117.	Recovery for violation of rights.
1118.	Destruction of infringing articles.
1119.	Power of court over registration.
1120.	Civil liability for false or fraudulent registration.
1121.	Jurisdiction of Federal courts; State and local requirements that registered trademarks be altered or displayed differently; prohibition.
1121a.	Transferred.
1122.	Liability of United States and States, and instrumentalities and officials thereof.
1123.	Rules and regulations for conduct of proceedings in Patent and Trademark Office.
1124.	Importation of goods bearing infringing marks or names forbidden.
1125.	False designations of origin, false descriptions, and dilution forbidden.
1126.	International conventions.
1127.	Construction and definitions; intent of chapter.
1128.	Repealed.
1129.	Transferred.

SUBCHAPTER IV—THE MADRID PROTOCOL

1141.	Definitions.
1141a.	International applications based on United States applications or registrations.
1141b.	Certification of the international application.
1141c.	Restriction, abandonment, cancellation, or expiration of a basic application or basic registration.
1141d.	Request for extension of protection subsequent to international registration.
1141e.	Extension of protection of an international registration to the United States under the Madrid Protocol.
1141f.	Effect of filing a request for extension of protection of an international registration to the United States.
1141g.	Right of priority for request for extension of protection to the United States.
1141h.	Examination of and opposition to request for extension of protection; notification of refusal.
1141i.	Effect of extension of protection.
1141j.	Dependence of extension of protection to the United States on the underlying international registration.
1141k.	Duration, affidavits and fees.
1141l.	Assignment of an extension of protection.
1141m.	Incontestability.
1141n.	Rights of extension of protection.

EFFECTIVE DATE

This chapter, act July 5, 1946, ch. 540, 60 Stat. 427, became effective one year from July 5, 1946, and repealed chapter 3 of this title as of that date. See notes under section 1051 of this title.

PRIOR LAWS

The Trade-Mark Act of 1905 superseded the Trade-Mark Act of Mar. 3, 1881, ch. 138, 21 Stat. 502, entitled "An Act to authorize the registration of trade-marks and protect the same," and also act Aug. 5, 1882, ch. 393, 22 Stat. 298, entitled "An Act relating to the registration of trade marks". Former section 109 of this title repealed all inconsistent acts and parts of acts, except so far as they might apply to certificates of registration issued under the Trade-Mark Act of Mar. 3, 1881, ch. 138, and act Aug. 5, 1882, ch. 393.

SUBCHAPTER I—THE PRINCIPAL REGISTER

§ 1051. Application for registration; verification

(a) Application for use of trademark

(1) The owner of a trademark used in commerce may request registration of its trademark on the principal register hereby established by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement, in such form as may be prescribed by the Director, and such number of specimens or facsimiles of the mark as used as may be required by the Director.

(2) The application shall include specification of the applicant's domicile and citizenship, the date of the applicant's first use of the mark, the date of the applicant's first use of the mark in commerce, the goods in connection with which the mark is used, and a drawing of the mark.

(3) The statement shall be verified by the applicant and specify that—

(A) the person making the verification believes that he or she, or the juristic person in whose behalf he or she makes the verification, to be the owner of the mark sought to be registered;

(B) to the best of the verifier's knowledge and belief, the facts recited in the application are accurate;

(C) the mark is in use in commerce; and

(D) to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive, except that, in the case of every application claiming concurrent use, the applicant shall—

(i) state exceptions to the claim of exclusive use; and

(ii) shall¹ specify, to the extent of the verifier's knowledge—

(I) any concurrent use by others;

(II) the goods on or in connection with which and the areas in which each concurrent use exists;

(III) the periods of each use; and

(IV) the goods and area for which the applicant desires registration.

(4) The applicant shall comply with such rules or regulations as may be prescribed by the Director. The Director shall promulgate rules prescribing the requirements for the application and for obtaining a filing date herein.

(b) Application for bona fide intention to use trademark

(1) A person who has a bona fide intention, under circumstances showing the good faith of such person, to use a trademark in commerce may request registration of its trademark on the principal register hereby established by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement, in such form as may be prescribed by the Director.

¹ So in original. The word "shall" probably should not appear.

(2) The application shall include specification of the applicant's domicile and citizenship, the goods in connection with which the applicant has a bona fide intention to use the mark, and a drawing of the mark.

(3) The statement shall be verified by the applicant and specify—

(A) that the person making the verification believes that he or she, or the juristic person in whose behalf he or she makes the verification, to be entitled to use the mark in commerce;

(B) the applicant's bona fide intention to use the mark in commerce;

(C) that, to the best of the verifier's knowledge and belief, the facts recited in the application are accurate; and

(D) that, to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive.

Except for applications filed pursuant to section 1126 of this title, no mark shall be registered until the applicant has met the requirements of subsections (c) and (d) of this section.

(4) The applicant shall comply with such rules or regulations as may be prescribed by the Director. The Director shall promulgate rules prescribing the requirements for the application and for obtaining a filing date herein.

(c) Amendment of application under subsection (b) to conform to requirements of subsection (a)

At any time during examination of an application filed under subsection (b) of this section, an applicant who has made use of the mark in commerce may claim the benefits of such use for purposes of this chapter, by amending his or her application to bring it into conformity with the requirements of subsection (a) of this section.

(d) Verified statement that trademark is used in commerce

(1) Within six months after the date on which the notice of allowance with respect to a mark is issued under section 1063(b)(2) of this title to an applicant under subsection (b) of this section, the applicant shall file in the Patent and Trademark Office, together with such number of specimens or facsimiles of the mark as used in commerce as may be required by the Director and payment of the prescribed fee, a verified statement that the mark is in use in commerce and specifying the date of the applicant's first use of the mark in commerce and those goods or services specified in the notice of allowance on or in connection with which the mark is used in commerce. Subject to examination and acceptance of the statement of use, the mark shall be registered in the Patent and Trademark Office, a certificate of registration shall be issued for those goods or services recited in the statement of use for which the mark is entitled to registration, and notice of registration shall be published in the Official Gazette of the Patent and Trademark Office. Such examination may in-

clude an examination of the factors set forth in subsections (a) through (e) of section 1052 of this title. The notice of registration shall specify the goods or services for which the mark is registered.

(2) The Director shall extend, for one additional 6-month period, the time for filing the statement of use under paragraph (1), upon written request of the applicant before the expiration of the 6-month period provided in paragraph (1). In addition to an extension under the preceding sentence, the Director may, upon a showing of good cause by the applicant, further extend the time for filing the statement of use under paragraph (1) for periods aggregating not more than 24 months, pursuant to written request of the applicant made before the expiration of the last extension granted under this paragraph. Any request for an extension under this paragraph shall be accompanied by a verified statement that the applicant has a continued bona fide intention to use the mark in commerce and specifying those goods or services identified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce. Any request for an extension under this paragraph shall be accompanied by payment of the prescribed fee. The Director shall issue regulations setting forth guidelines for determining what constitutes good cause for purposes of this paragraph.

(3) The Director shall notify any applicant who files a statement of use of the acceptance or refusal thereof and, if the statement of use is refused, the reasons for the refusal. An applicant may amend the statement of use.

(4) The failure to timely file a verified statement of use under paragraph (1) or an extension request under paragraph (2) shall result in abandonment of the application, unless it can be shown to the satisfaction of the Director that the delay in responding was unintentional, in which case the time for filing may be extended, but for a period not to exceed the period specified in paragraphs (1) and (2) for filing a statement of use.

(e) Designation of resident for service of process and notices

If the applicant is not domiciled in the United States the applicant may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the registrant does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.

(July 5, 1946, ch. 540, title I, §1, 60 Stat. 427; Pub. L. 87-772, §1, Oct. 9, 1962, 76 Stat. 769; Pub. L.

93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100-667, title I, §103, Nov. 16, 1988, 102 Stat. 3935; Pub. L. 105-330, title I, §103, title II, §201(a)(1), Oct. 30, 1998, 112 Stat. 3064, 3069; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583; Pub. L. 107-273, div. C, title III, §13207(b)(1), (2), Nov. 2, 2002, 116 Stat. 1906.)

PRIOR PROVISIONS

Subsecs. (a) to (c) are from acts Feb. 20, 1905, ch. 592, §§1, 2, 33 Stat. 724; May 4, 1906, ch. 2081, §1, 34 Stat. 168; Feb. 18, 1909, ch. 144, 35 Stat. 628; Apr. 11, 1930, ch. 132, §4, 46 Stat. 155; June 10, 1938, ch. 332, §1, 52 Stat. 638.

Subsec. (d) is from act Feb. 20, 1905, ch. 592, §3, 33 Stat. 725.

AMENDMENTS

2002—Subsec. (d)(1). Pub. L. 107-273, §13207(b)(1), in first sentence, substituted “specifying the date of the applicant’s first use of the mark in commerce and those goods or services specified in the notice of allowance on or in connection with which the mark is used in commerce.” for “specifying the date of the applicant’s first use of the mark in commerce and., those goods or services specified in the notice of allowance on or in connection with which the mark is used in commerce.”

Subsec. (e). Pub. L. 107-273, §13207(b)(2), amended subsec. (e) generally. Prior to amendment, subsec. (e) required applicant not domiciled in United States to designate name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark and provided that notices or process be served by leaving with such person or mailing to him a copy, or upon Director if designated person cannot be found.

1999—Subsecs. (a), (b), (d), (e). Pub. L. 106-113 substituted “Director” for “Commissioner” wherever appearing.

1998—Subsec. (a). Pub. L. 105-330, §103(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) related to application by owner of a trademark used in commerce to register the trademark by filing in the Patent and Trademark Office a written application in prescribed form and verified by applicant, by paying prescribed fee, and by complying with prescribed rules or regulations.

Subsec. (b). Pub. L. 105-330, §103(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to application, by person with bona fide intention, under circumstances showing good faith, to use a trademark in commerce, to register trademark by filing in the Patent and Trademark Office a written application in prescribed form and verified by applicant, by paying prescribed fee, and by complying with prescribed rules or regulations.

Subsec. (d)(1). Pub. L. 105-330, §201(a)(1)(A), inserted “and,” after “specifying the date of the applicant’s first use of the mark in commerce”.

Pub. L. 105-330, §201(a)(1)(B), which directed the striking out of “and, the mode or manner in which the mark is used on or in connection with such goods or services”, was executed by striking out “, and the mode or manner in which the mark is used on or in connection with such goods or services” after “notice of allowance on or in connection with which the mark is used in commerce”, to reflect the probable intent of Congress.

Subsec. (d)(4). Pub. L. 105-330, §103(c), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The failure to timely file a verified statement of use under this subsection shall result in abandonment of the application.”

1988—Subsec. (a). Pub. L. 100-667, §103(1) to (7), inserted “(a)” preceding introductory provisions and substituted “may apply to register his or her” for “may register his”, redesignated former subsecs. (a) to (c) as pars. (1) to (3), respectively, redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, in par.

(1)(A), substituted “used on or in connection with” for “applied to” and “goods on or in connection” for “goods in connection”, in par. (1)(C), struck out “actually” after “the mark as”, and in par. (2), substituted “prescribed” for “filing”.

Subsecs. (b), (c). Pub. L. 100-667, §103(3), (9), added subsecs. (b) and (c) and redesignated former subsecs. (b) and (c) as pars. (2) and (3), respectively, of subsec. (a).

Subsecs. (d), (e). Pub. L. 100-667, §103(8), (9), added subsec. (d) and redesignated former subsec. (d) as (e).

1975—Subsecs. (a), (b), (d). Pub. L. 93-596 substituted

“Patent and Trademark Office” for “Patent Office”.

1962—Subsec. (a)(1). Pub. L. 87-772 substituted “as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive” for “as might be calculated to deceive”, and struck out “or services” after “use by others, the goods”.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-330, title I, §109(b), Oct. 30, 1998, 112 Stat. 3069, provided that: “This title [see Short Title of 1998 Amendment note below] and the amendments made by this title shall apply to any application for registration of a trademark pending on, or filed on or after, the effective date of this Act [probably should be “this title”, see section 110 of Pub. L. 105-330, set out as an Effective Date of 1998 Amendment note below].”

Pub. L. 105-330, title I, §110, Oct. 30, 1998, 112 Stat. 3069, provided that: “This title [see Short Title of 1998 Amendment note below] and the amendments made by this title shall take effect—

“(1) on the date that is 1 year after the date of the enactment of this Act [Oct. 30, 1998], or

“(2) upon the entry into force of the Trademark Law Treaty with respect to the United States [Aug. 12, 2000], whichever occurs first.”

Pub. L. 105-330, title II, §201(b), Oct. 30, 1998, 112 Stat. 3070, provided that: “The amendments made by this section [amending this section and sections 1052, 1057, 1064, 1091, 1094, 1113 to 1115, 1121, and 1124 of this title] shall take effect on the date of enactment of this Act [Oct. 30, 1998], and shall apply only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark.”

EFFECTIVE DATE OF 1988 AMENDMENT

Section 136 of title I of Pub. L. 100-667 provided that: “This title and the amendments made by this title [see Short Title of 1988 Amendment note below] shall become effective on the date which is one year after the date of enactment of this Act [Nov. 16, 1988].”

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

EFFECTIVE DATE

Section 46(a) of act July 5, 1946, provided that this chapter shall be in force and take effect one year from July 5, 1946.

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111-146, §1, Mar. 17, 2010, 124 Stat. 66, provided that: “This Act [amending sections 1057, 1058, 1065, 1071, and 1141k of this title] may be cited as the ‘Trademark Technical and Conforming Amendment Act of 2010’.”

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109-312, §1(a), Oct. 6, 2006, 120 Stat. 1730, provided that: “This Act [amending sections 1052, 1063,

1064, 1092, 1125, and 1127 of this title] may be cited as the ‘Trademark Dilution Revision Act of 2006’.”

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108-482, §1, Dec. 23, 2004, 118 Stat. 3912, provided that: “This Act [amending section 1117 of this title, section 504 of Title 17, Copyrights, sections 2318 and 3559 of Title 18, Crimes and Criminal Procedure, and sections 85 and 112 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under this section, section 1117 of this title, sections 2311 and 2318 of Title 18, and listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28] may be cited as the ‘Intellectual Property Protection and Courts Amendments Act of 2004’.”

Pub. L. 108-482, title II, §201, Dec. 23, 2004, 118 Stat. 3916, provided that: “This title [amending section 1117 of this title, section 504 of Title 17, Copyrights, and section 3559 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under section 1117 of this title and listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the ‘Fraudulent Online Identity Sanctions Act’.”

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107-273, div. C, title III, §13401, Nov. 2, 2002, 116 Stat. 1913, provided that: “This subtitle [subtitle D (§§13401-13403) of title III of div. C of Pub. L. 107-273, enacting subchapter IV of this chapter and provisions set out as a note under section 1141 of this title] may be cited as the ‘Madrid Protocol Implementation Act’.”

SHORT TITLE OF 1999 AMENDMENTS

Pub. L. 106-113, div. B, §1000(a)(9) [title III, §3001(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A-545, provided that: “This title [enacting section 1129 of this title, amending sections 1114, 1116, 1117, 1125, and 1127 of this title, section 470a of Title 16, Conservation, and section 1338 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under this section and sections 1117 and 1125 of this title] may be cited as the ‘Anticybersquatting Consumer Protection Act’.”

Pub. L. 106-43, §1, Aug. 5, 1999, 113 Stat. 218, provided that: “This Act [amending sections 1052 to 1054, 1060, 1063, 1064, 1091, 1092, 1114, 1116 to 1118, 1122, and 1124 to 1127 of this title, enacting provisions set out as a note under section 1052 of this title, and amending provisions set out as a note under this section] may be cited as the ‘Trademarks Amendments Act of 1999’.”

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105-330, title I, §101, Oct. 30, 1998, 112 Stat. 3064, provided that: “This title [amending this section and sections 1058 to 1060, 1062, and 1126 of this title and enacting provisions set out as notes under this section and sections 1058 and 1059 of this title] may be cited as the ‘Trademark Law Treaty Implementation Act’.”

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104-98, §1, Jan. 16, 1996, 109 Stat. 985, provided that: “This Act [amending sections 1125 and 1127 of this title and enacting provisions set out as a note under section 1125 of this title] may be cited as the ‘Federal Trademark Dilution Act of 1995’.”

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102-542, §1, Oct. 27, 1992, 106 Stat. 3567, provided that: “This Act [enacting section 1122 of this title, amending sections 1114, 1125, and 1127 of this title, and enacting provisions set out as a note under section 1114 of this title] may be cited as the ‘Trademark Remedy Clarification Act’.”

SHORT TITLE OF 1988 AMENDMENT

Section 101 of title I of Pub. L. 100-667 provided that: “This title [amending this section and sections 1052 to

1060, 1062 to 1066, 1068, 1069, 1071, 1091, 1092, 1094, 1095, 1111, 1112, 1114 to 1118, 1121, and 1125 to 1127 of this title, redesignating section 1121a of this title as section 1121(b) of this title, and enacting provisions set out as notes under sections 1051 and 1058 of this title] may be cited as the ‘Trademark Law Revision Act of 1988’.”

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-620, title I, §101, Nov. 8, 1984, 98 Stat. 3335, provided that: “This title [amending sections 1064 and 1127 of this title and enacting provisions set out as a note under section 1064 of this title] may be cited as the ‘Trademark Clarification Act of 1984’.”

SHORT TITLE

Act July 5, 1946, ch. 540, 60 Stat. 427, which is classified to this chapter, is popularly known as the ‘Lanham Act’ and also as the ‘Trademark Act of 1946’.

REPEAL OF INCONSISTENT PROVISIONS; CERTAIN PROVISIONS NOT AFFECTED

Section 46(a) of act July 5, 1946, as amended by Pub. L. 106-43, §6(b), Aug. 5, 1999, 113 Stat. 220, provided in part that all acts and parts of acts inconsistent with this chapter are repealed effective one year from July 5, 1946, but that “nothing contained in this Act [this chapter] shall be construed as limiting, restricting, modifying, or repealing any statute in force on the effective date of this Act [July 5, 1947] which does not relate to trademarks, or as restricting or increasing the authority of any Federal department or regulatory agency except as may be specifically provided in this Act [this chapter].”

Section 48 of act July 5, 1946, provided that: “Section 4 of the Act of January 5, 1905 (U.S.C., title 36, sec. 4), as amended, entitled ‘An Act to incorporate the National Red Cross’ [see 18 U.S.C. 706], and section 7 of the Act of June 15, 1916 (U.S.C., title 36, sec. 27), entitled ‘An Act to incorporate the Boy Scouts of America, and for other purposes’ [see 36 U.S.C. 30905], and the Act of June 20, 1936 (U.S.C., title 22, sec. 248), entitled ‘An Act to prohibit the commercial use of the coat of arms of the Swiss Confederation’ [see 18 U.S.C. 708], are not repealed or affected by this Act.”

SAVINGS PROVISION

Pub. L. 106-113, div. B, §1000(a)(9) [title III, §3008], Nov. 29, 1999, 113 Stat. 1536, 1501A-551, provided that: “Nothing in this title [see Short Title of 1999 Amendments note above] shall affect any defense available to a defendant under the Trademark Act of 1946 [15 U.S.C. 1051 et seq.] (including any defense under section 43(c)(4) of such Act [15 U.S.C. 1125(c)(4)] or relating to fair use) or a person’s right of free speech or expression under the first amendment of the United States Constitution.”

SEPARABILITY

Section 50 of act July 5, 1946, provided that: “If any provision of this Act [this chapter] or the application of such provision to any person or circumstance is held invalid, the remainder of the Act shall not be affected thereby.”

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Commerce to Secretary of Commerce, with certain exceptions, see Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

PENDING PROCEEDINGS AND EXISTING REGISTRATION AND RIGHTS UNDER PRIOR ACTS

Section 46(a) of act July 5, 1946, provided in part that this chapter, except as otherwise specifically provided therein, shall not affect any suit, proceeding or appeal

pending on the effective date of this chapter and that the repeal of all inconsistent acts “shall not affect the validity of registrations granted or applied for under any of said Acts prior to the effective date of this Act [July 5, 1947], or rights or remedies thereunder except as provided in sections 8, 12, 14, 15, and 47 of this Act [sections 1058, 1062, 1064, and 1065 of this title and note under this section].”

Sections 46(b) and 47 of act July 5, 1946, provided:

“(b) Registrations now existing under the Act of March 3, 1881, or the Act of February 20, 1905 [sections 81 to 109 of this title], shall continue in full force and effect for the unexpired terms thereof and may be renewed under the provisions of section 9 of this Act [section 1059 of this title]. Such registrations and the renewals thereof shall be subject to and shall be entitled to the benefits of the provisions of this Act [this chapter] to the same extent and with the same force and effect as though registered on the principal register established by this Act [this chapter] except as limited in sections 8, 12, 14, and 15 of this Act [sections 1058, 1062, 1064, 1065, of this title]. Marks registered under the ‘ten-year proviso’ of section 5 of the Act of February 20, 1905, as amended [former section 85 of this title], shall be deemed to have become distinctive of the registrant’s goods in commerce under paragraph (f) of section 2 of this Act [section 1052 of this title] and may be renewed under section 9 hereof [section 1059 of this title] as marks coming within said paragraph.

“Registrations now existing under the Act of March 19, 1920 [former sections 121 to 128 of this title], shall expire six months after the effective date of this Act [July 5, 1947], or twenty years from the dates of their registrations, whichever date is later. Such registrations shall be subject to and entitled to the benefits of the provisions of this Act [this chapter] relating to marks registered on the supplemental register established by this Act [this chapter], and may not be renewed unless renewal is required to support foreign registrations. In that event renewal may be effected on the supplemental register under the provisions of section 9 of this Act [section 1059 of this title].

“Marks registered under previous Acts may, if eligible, also be registered under this Act [this chapter].

“SEC. 47. (a) All applications for registration pending in the Patent Office at the effective date of this Act [July 5, 1947] may be amended, if practicable, to bring them under the provisions of this Act [this chapter]. The prosecution of such applications so amended and the grant of registrations thereon shall be proceeded with in accordance with the provisions of this Act [this chapter]. If such amendments are not made, the prosecution of said applications shall be proceeded with and registrations thereon granted in accordance with the Acts under which said applications were filed, and said Acts are hereby continued in force to this extent and for this purpose only, notwithstanding the foregoing general repeal thereof.

“(b) In any case in which an appeal is pending before the United States Court of Customs and Patent Appeals or any United States Circuit Court of Appeals or the United States Court of Appeals for the District of Columbia or the United States Supreme Court at the effective date of this Act [July 5, 1947], the court, if it be of the opinion that the provisions of this Act [this chapter] are applicable to the subject matter of the appeal, may apply such provision or may remand the case to the Commissioner [now Director] or to the district court for the taking of additional evidence or a new trial or for reconsideration of the decision on the record as made, as the appellate court may deem proper.”

Section 49 of said act July 5, 1946, provided: “Nothing herein [in this chapter] shall adversely affect the rights or the enforcement of rights in marks acquired in good faith prior to the effective date of this Act [July 5, 1947].”

EMERGENCY RELIEF FROM POSTAL SITUATION AFFECTING TRADEMARK CASES

Relief as to filing date of trademark application or registration and excusal of delayed fees or actions affected by postal situation beginning on Mar. 18, 1970, and ending on or about Mar. 30, 1970, see note set out under section 111 of Title 35, Patents.

§ 1052. Trademarks registrable on principal register; concurrent registration

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it—

(a) Consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; or a geographical indication which, when used on or in connection with wines or spirits, identifies a place other than the origin of the goods and is first used on or in connection with wines or spirits by the applicant on or after one year after the date on which the WTO Agreement (as defined in section 3501(9) of title 19) enters into force with respect to the United States.

(b) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any State or municipality, or of any foreign nation, or any simulation thereof.

(c) Consists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the United States during the life of his widow, if any, except by the written consent of the widow.

(d) Consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive: *Provided*, That if the Director determines that confusion, mistake, or deception is not likely to result from the continued use by more than one person of the same or similar marks under conditions and limitations as to the mode or place of use of the marks or the goods on or in connection with which such marks are used, concurrent registrations may be issued to such persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to (1) the earliest of the filing dates of the applications pending or of any registration issued under this chapter; (2) July 5, 1947, in the case of registrations previously issued under the Act of March 3, 1881, or February 20, 1905, and continuing in full force and effect on that date; or (3) July 5, 1947, in the case of applications filed under the Act of February 20, 1905, and registered after July 5, 1947. Use prior to the filing date of any pending application or a registration shall not be required when the owner of such application or registration consents to the grant of a concurrent registration to the applicant.

Concurrent registrations may also be issued by the Director when a court of competent jurisdiction has finally determined that more than one person is entitled to use the same or similar marks in commerce. In issuing concurrent registrations, the Director shall prescribe conditions and limitations as to the mode or place of use of the mark or the goods on or in connection with which such mark is registered to the respective persons.

(e) Consists of a mark which (1) when used on or in connection with the goods of the applicant is merely descriptive or deceptively misdescriptive of them, (2) when used on or in connection with the goods of the applicant is primarily geographically descriptive of them, except as indications of regional origin may be registrable under section 1054 of this title, (3) when used on or in connection with the goods of the applicant is primarily geographically deceptively misdescriptive of them, (4) is primarily merely a surname, or (5) comprises any matter that, as a whole, is functional.

(f) Except as expressly excluded in subsections (a), (b), (c), (d), (e)(3), and (e)(5) of this section, nothing in this chapter shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods in commerce. The Director may accept as prima facie evidence that the mark has become distinctive, as used on or in connection with the applicant's goods in commerce, proof of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for the five years before the date on which the claim of distinctiveness is made. Nothing in this section shall prevent the registration of a mark which, when used on or in connection with the goods of the applicant, is primarily geographically deceptively misdescriptive of them, and which became distinctive of the applicant's goods in commerce before December 8, 1993.

A mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title, may be refused registration only pursuant to a proceeding brought under section 1063 of this title. A registration for a mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title, may be canceled pursuant to a proceeding brought under either section 1064 of this title or section 1092 of this title.

(July 5, 1946, ch. 540, title I, § 2, 60 Stat. 428; Pub. L. 87-772, § 2, Oct. 9, 1962, 76 Stat. 769; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100-667, title I, § 104, Nov. 16, 1988, 102 Stat. 3937; Pub. L. 103-182, title III, § 333(a), Dec. 8, 1993, 107 Stat. 2114; Pub. L. 103-465, title V, § 522, Dec. 8, 1994, 108 Stat. 4982; Pub. L. 105-330, title II, § 201(a)(2), (12), Oct. 30, 1998, 112 Stat. 3069, 3070; Pub. L. 106-43, § 2(a), Aug. 5, 1999, 113 Stat. 218; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583; Pub. L. 109-312, § 3(a), Oct. 6, 2006, 120 Stat. 1732.)

REFERENCES IN TEXT

Acts March 3, 1881, and February 20, 1905, referred to in subsec. (d), are acts Mar. 3, 1881, ch. 138, 21 Stat. 502,

and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, § 46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, § 5, 33 Stat. 725; Mar. 2, 1907, ch. 2573, § 1, 34 Stat. 1251; Feb. 18, 1911, ch. 113, 36 Stat. 918; Jan. 8, 1913, ch. 7, 37 Stat. 649; Mar. 19, 1920, ch. 104, § 9, 41 Stat. 535; June 7, 1924, ch. 341, 43 Stat. 647.

AMENDMENTS

2006—Pub. L. 109-312, which directed substitution of “A mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title, may be refused registration only pursuant to a proceeding brought under section 1063 of this title. A registration for a mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title, may be canceled pursuant to a proceeding brought under either section 1064 of this title or section 1092 of this title.” for last two sentences in subsec. (f) of this section, was executed by making the substitution for “A mark which when used would cause dilution under section 1125(c) of this title may be refused registration only pursuant to a proceeding brought under section 1063 of this title. A registration for a mark which when used would cause dilution under section 1125(c) of this title may be canceled pursuant to a proceeding brought under either section 1064 of this title or section 1092 of this title.” in concluding provisions of section to reflect the probable intent of Congress.

1999—Pub. L. 106-43 inserted concluding provisions.

Subsecs. (d), (f). Pub. L. 106-113 substituted “Director” for “Commissioner” wherever appearing.

1998—Pub. L. 105-330, § 201(a)(12), substituted “trademark” for “trade-mark” in introductory provisions.

Subsec. (e). Pub. L. 105-330, § 201(a)(2)(A), struck out “or” before “(4)” and inserted “, or (5) comprises any matter that, as a whole, is functional” before period at end.

Subsec. (f). Pub. L. 105-330, § 201(a)(2)(B), substituted “subsections (a), (b), (c), (d), (e)(3), and (e)(5)” for “paragraphs (a), (b), (c), (d), and (e)(3)”.

1994—Subsec. (a). Pub. L. 103-465 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute.”

1993—Subsec. (e). Pub. L. 103-182, § 333(a)(1), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “Consists of a mark which, (1) when used on or in connection with the goods of the applicant is merely descriptive or deceptively misdescriptive of them, or (2) when used on or in connection with the goods of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, except as indications of regional origin may be registrable under section 1054 of this title, or (3) is primarily merely a surname.”

Subsec. (f). Pub. L. 103-182, § 333(a)(2), substituted “(d), and (e)(3)” for “and (d)” and inserted at end “Nothing in this section shall prevent the registration of a mark which, when used on or in connection with the goods of the applicant, is primarily geographically deceptively misdescriptive of them, and which became distinctive of the applicant's goods in commerce before December 8, 1993.”

1988—Subsec. (d). Pub. L. 100-667, § 104(1), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “Consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when applied to the goods of the

applicant, to cause confusion, or to cause mistake, or to deceive: *Provided*, That when the Commissioner determines that confusion, mistake, or deception is not likely to result from the continued use by more than one person of the same or similar marks under conditions and limitations as to the mode or place of use of the marks or the goods in connection with which such marks are used, concurrent registrations may be issued to such persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to (i) the earliest of the filing dates of the applications pending or of any registration issued under this chapter; or (ii) July 5, 1947, in the case of registrations previously issued under the Act of March 3, 1881, or February 20, 1905, and continuing in full force and effect on that date; or (iii) July 5, 1947, in the case of applications filed under the Act of February 20, 1905, and registered after July 5, 1947. Concurrent registrations may also be issued by the Commissioner when a court of competent jurisdiction has finally determined that more than one person is entitled to use the same or similar marks in commerce. In issuing concurrent registrations, the Commissioner shall prescribe conditions and limitations as to the mode or place of use of the mark or the goods in connection with which such mark is registered to the respective persons."

Subsec. (e). Pub. L. 100-667, §104(2), substituted "used on or in connection with" for "applied to" in two places.

Subsec. (f). Pub. L. 100-667, §104(3), substituted "used on or in connection with" for "applied to" and "five years before the date on which the claim of distinctiveness is made" for "five years next preceding the date of the filing of the application for its registration"

1975—Subsec. (d). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

1962—Subsec. (d). Pub. L. 87-772, among other changes, substituted provisions authorizing the issuance of concurrent registrations to persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to the earliest of the filing dates of the applications pending or of any registration issued under this chapter, or July 5, 1947, in the case of registrations previously issued under the act of Mar. 3, 1881, or Feb. 20, 1905, and continuing in full force and effect on that date, or July 5, 1947, in the case of applications under the act of Feb. 20, 1905, and registered after July 5, 1947, for provisions which restricted issuance of concurrent registrations to persons entitled to use such mark as a result of their concurrent lawful use thereof in commerce prior to any of the filing dates of the applications involved, and provisions directing that issuance of the mark be upon such conditions and limitations as to the mode or place of use of the marks or the goods in connection with which such marks are used, for provisions which required issuance under conditions and limitations as to the mode or place of use of the goods in connection with which such registrations may be granted, and eliminated provisions which limited confusion, mistake, or deception to purchasers, required written notice of applications for concurrent registrations and of hearings thereon, and publication in the Official Gazette upon a decision to grant such a registration and permitted a court to order such a registration under section 4915 of the Revised Statutes.

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of Title 35, Patents.

Pub. L. 106-43, §2(e), Aug. 5, 1999, 113 Stat. 218, provided that: "The amendments made by this section [amending this section and sections 1063, 1064, and 1092 of this title] shall take effect on the date of enactment of this Act [Aug. 5, 1999] and shall apply only to any application for registration filed on or after January 16, 1996."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105-330, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 523 of title V of Pub. L. 103-465 provided that: "The amendments made by this subtitle [subtitle B (§§521-523) of title V of Pub. L. 103-465, amending this section and section 1127 of this title] take effect one year after the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995]."

EFFECTIVE DATE OF 1993 AMENDMENT

Section 335 of title III of Pub. L. 103-182 provided that:

"(a) IN GENERAL.—Subject to subsections (b) and (c), the amendments made by this subtitle [subtitle C (§§331-335) of title III of Pub. L. 103-182, enacting section 104A of Title 17, Copyrights, amending this section, section 1091 of this title, and section 104 of Title 35, Patents, and amending provisions set out as a note under section 109 of Title 17] take effect on the date the Agreement [North American Free Trade Agreement] enters into force with respect to the United States [Jan. 1, 1994].

"(b) SECTION 331.—The amendments made by section 331 [amending section 104 of Title 35] shall apply to all patent applications that are filed on or after the date of the enactment of this Act [Dec. 8, 1993]: *Provided*, That an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a NAFTA country, except as provided in sections 119 and 365 of title 35, United States Code, that is earlier than the date of the enactment of this Act.

"(c) SECTION 333.—The amendments made by section 333 [amending this section and section 1091 of this title] shall apply only to trademark applications filed on or after the date of the enactment of this Act."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Commerce to Secretary of Commerce, with certain exceptions, see Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

URUGUAY ROUND AGREEMENTS: ENTRY INTO FORCE

The Uruguay Round Agreements, including the World Trade Organization Agreement and agreements annexed to that Agreement, as referred to in section 3511(d) of Title 19, Customs Duties, entered into force with respect to the United States on Jan. 1, 1995. See note set out under section 3511 of Title 19.

MARKS REGISTERED UNDER TEN-YEAR PROVISIO OF
TRADE-MARK ACT OF 1905

Marks registered under the “ten-year proviso” of section 5 of the act of Feb. 20, 1905, as amended, deemed to have become distinctive of the registrant’s goods in commerce under par. (f) of this section, see section 46(b) of act July 5, 1946, set out in note under section 1051 of this title.

§ 1053. Service marks registrable

Subject to the provisions relating to the registration of trademarks, so far as they are applicable, service marks shall be registrable, in the same manner and with the same effect as are trademarks, and when registered they shall be entitled to the protection provided in this chapter in the case of trademarks. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration of trademarks.

(July 5, 1946, ch. 540, title I, § 3, 60 Stat. 429; Pub. L. 100-667, title I, § 105, Nov. 16, 1988, 102 Stat. 3938; Pub. L. 106-43, § 6(b), Aug. 5, 1999, 113 Stat. 220.)

AMENDMENTS

1999—Pub. L. 106-43 substituted “trademarks” for “trade-marks” wherever appearing.

1988—Pub. L. 100-667 struck out “used in commerce” after “applicable, service marks” and “, except when used so as to represent falsely that the owner thereof makes or sells the goods on which such mark is used. The Commissioner may establish a separate register for such service marks” after “case of trade-marks”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1054. Collective marks and certification marks registrable

Subject to the provisions relating to the registration of trademarks, so far as they are applicable, collective and certification marks, including indications of regional origin, shall be registrable under this chapter, in the same manner and with the same effect as are trademarks, by persons, and nations, States, municipalities, and the like, exercising legitimate control over the use of the marks sought to be registered, even though not possessing an industrial or commercial establishment, and when registered they shall be entitled to the protection provided in this chapter in the case of trademarks, except in the case of certification marks when used so as to represent falsely that the owner or a user thereof makes or sells the goods or performs the

services on or in connection with which such mark is used. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration of trademarks.

(July 5, 1946, ch. 540, title I, § 4, 60 Stat. 429; Pub. L. 100-667, title I, § 106, Nov. 16, 1988, 102 Stat. 3938; Pub. L. 106-43, § 6(b), Aug. 5, 1999, 113 Stat. 220.)

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, § 1, 33 Stat. 724; May 4, 1906, ch. 2081, § 1, 34 Stat. 168; Feb. 18, 1909, ch. 144, 35 Stat. 628; Apr. 11, 1930, ch. 132, § 4, 46 Stat. 155; June 10, 1938, ch. 332, § 1, 52 Stat. 638.

AMENDMENTS

1999—Pub. L. 106-43 substituted “trademarks” for “trade-marks” wherever appearing.

1988—Pub. L. 100-667 substituted “origin,” for “origin used in commerce,” and “except in the case of certification marks when” for “except when” and struck out after first sentence “The Commissioner may establish a separate register for such collective marks and certification marks.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1055. Use by related companies affecting validity and registration

Where a registered mark or a mark sought to be registered is or may be used legitimately by related companies, such use shall inure to the benefit of the registrant or applicant for registration, and such use shall not affect the validity of such mark or of its registration, provided such mark is not used in such manner as to deceive the public. If first use of a mark by a person is controlled by the registrant or applicant for registration of the mark with respect to the nature and quality of the goods or services, such first use shall inure to the benefit of the registrant or applicant, as the case may be.

(July 5, 1946, ch. 540, title I, § 5, 60 Stat. 429; Pub. L. 100-667, title I, § 107, Nov. 16, 1988, 102 Stat. 3938.)

AMENDMENTS

1988—Pub. L. 100-667 inserted at end “If first use of a mark by a person is controlled by the registrant or applicant for registration of the mark with respect to the nature and quality of the goods or services, such first use shall inure to the benefit of the registrant or applicant, as the case may be.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

§ 1056. Disclaimer of unregistrable matter**(a) Compulsory and voluntary disclaimers**

The Director may require the applicant to disclaim an unregistrable component of a mark otherwise registrable. An applicant may voluntarily disclaim a component of a mark sought to be registered.

(b) Prejudice of rights

No disclaimer, including those made under subsection (e) of section 1057 of this title, shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or his right of registration on another application if the disclaimed matter be or shall have become distinctive of his goods or services.

(July 5, 1946, ch. 540, title I, § 6, 60 Stat. 429; Pub. L. 87-772, § 3, Oct. 9, 1962, 76 Stat. 769; Pub. L. 100-667, title I, § 108, Nov. 16, 1988, 102 Stat. 3938; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583.)

AMENDMENTS

1999—Subsec. (a). Pub. L. 106-113 substituted “Director” for “Commissioner”.

1988—Subsec. (b). Pub. L. 100-667 substituted “subsection (e)” for “paragraph (d)”.

1962—Pub. L. 87-772, among other changes, provided that an applicant may voluntarily disclaim a component of a mark sought to be registered.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1057. Certificates of registration**(a) Issuance and form**

Certificates of registration of marks registered upon the principal register shall be is-

sued in the name of the United States of America, under the seal of the United States Patent and Trademark Office, and shall be signed by the Director or have his signature placed thereon, and a record thereof shall be kept in the United States Patent and Trademark Office. The registration shall reproduce the mark, and state that the mark is registered on the principal register under this chapter, the date of the first use of the mark, the date of the first use of the mark in commerce, the particular goods or services for which it is registered, the number and date of the registration, the term thereof, the date on which the application for registration was received in the United States Patent and Trademark Office, and any conditions and limitations that may be imposed in the registration.

(b) Certificate as prima facie evidence

A certificate of registration of a mark upon the principal register provided by this chapter shall be prima facie evidence of the validity of the registered mark and of the registration of the mark, of the owner's ownership of the mark, and of the owner's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate, subject to any conditions or limitations stated in the certificate.

(c) Application to register mark considered constructive use

Contingent on the registration of a mark on the principal register provided by this chapter, the filing of the application to register such mark shall constitute constructive use of the mark, conferring a right of priority, nationwide in effect, on or in connection with the goods or services specified in the registration against any other person except for a person whose mark has not been abandoned and who, prior to such filing—

(1) has used the mark;

(2) has filed an application to register the mark which is pending or has resulted in registration of the mark; or

(3) has filed a foreign application to register the mark on the basis of which he or she has acquired a right of priority, and timely files an application under section 1126(d) of this title to register the mark which is pending or has resulted in registration of the mark.

(d) Issuance to assignee

A certificate of registration of a mark may be issued to the assignee of the applicant, but the assignment must first be recorded in the United States Patent and Trademark Office. In case of change of ownership the Director shall, at the request of the owner and upon a proper showing and the payment of the prescribed fee, issue to such assignee a new certificate of registration of the said mark in the name of such assignee, and for the unexpired part of the original period.

(e) Surrender, cancellation, or amendment by owner

Upon application of the owner the Director may permit any registration to be surrendered for cancellation, and upon cancellation appropriate entry shall be made in the records of the United States Patent and Trademark Office.

Upon application of the owner and payment of the prescribed fee, the Director for good cause may permit any registration to be amended or to be disclaimed in part: *Provided*, That the amendment or disclaimer does not alter materially the character of the mark. Appropriate entry shall be made in the records of the United States Patent and Trademark Office and upon the certificate of registration.

(f) Copies of United States Patent and Trademark Office records as evidence

Copies of any records, books, papers, or drawings belonging to the United States Patent and Trademark Office relating to marks, and copies of registrations, when authenticated by the seal of the United States Patent and Trademark Office and certified by the Director, or in his name by an employee of the Office duly designated by the Director, shall be evidence in all cases wherein the originals would be evidence; and any person making application therefor and paying the prescribed fee shall have such copies.

(g) Correction of United States Patent and Trademark Office mistake

Whenever a material mistake in a registration, incurred through the fault of the United States Patent and Trademark Office, is clearly disclosed by the records of the Office a certificate stating the fact and nature of such mistake shall be issued without charge and recorded and a printed copy thereof shall be attached to each printed copy of the registration and such corrected registration shall thereafter have the same effect as if the same had been originally issued in such corrected form, or in the discretion of the Director a new certificate of registration may be issued without charge. All certificates of correction heretofore issued in accordance with the rules of the United States Patent and Trademark Office and the registrations to which they are attached shall have the same force and effect as if such certificates and their issue had been specifically authorized by statute.

(h) Correction of applicant's mistake

Whenever a mistake has been made in a registration and a showing has been made that such mistake occurred in good faith through the fault of the applicant, the Director is authorized to issue a certificate of correction or, in his discretion, a new certificate upon the payment of the prescribed fee: *Provided*, That the correction does not involve such changes in the registration as to require republication of the mark.

(July 5, 1946, ch. 540, title I, § 7, 60 Stat. 430; Aug. 17, 1950, ch. 733, 64 Stat. 459; Pub. L. 87-772, § 4, Oct. 9, 1962, 76 Stat. 769; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100-667, title I, § 109, Nov. 16, 1988, 102 Stat. 3938; Pub. L. 105-330, title II, § 201(a)(3), Oct. 30, 1998, 112 Stat. 3070; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583; Pub. L. 111-146, § 3(a), Mar. 17, 2010, 124 Stat. 66.)

PRIOR PROVISIONS

Subsecs. (a) and (c) are from acts Feb. 20, 1905, ch. 592, § 11, 33 Stat. 727; Mar. 4, 1925, ch. 535, § 3, 43 Stat. 1269.

Subsec. (e) is from act Mar. 19, 1920, ch. 104, § 7, 41 Stat. 535.

Subsec. (f) is from act Mar. 4, 1925, ch. 535, § 1, 43 Stat. 1268.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-146, § 3(a)(1), inserted “United States” before “Patent and Trademark Office” wherever appearing.

Subsec. (b). Pub. L. 111-146, § 3(a)(2), substituted “owner’s” for “registrant’s” in two places.

Subsec. (d). Pub. L. 111-146, § 3(a)(1), inserted “United States” before “Patent and Trademark Office”.

Subsec. (e). Pub. L. 111-146, § 3(a)(1), (3), inserted “United States” before “Patent and Trademark Office” in two places, substituted “owner” for “registrant” in two places, and struck out “or, if said certificate is lost or destroyed, upon a certified copy thereof” after “certificate of registration”.

Subsec. (f). Pub. L. 111-146, § 3(a)(1), inserted “United States” before “Patent and Trademark Office” in two places.

Subsec. (g). Pub. L. 111-146, § 3(a)(4), amended subsec. (g) generally. Prior to amendment, text read as follows: “Whenever a material mistake in a registration, incurred through the fault of the Patent and Trademark Office, is clearly disclosed by the records of the Office a certificate stating the fact and nature of such mistake, shall be issued without charge and recorded and a printed copy thereof shall be attached to each printed copy of the registration certificate and such corrected registration shall thereafter have the same effect as if the same had been originally issued in such corrected form, or in the discretion of the Director a new certificate of registration may be issued without charge. All certificates of correction heretofore issued in accordance with the rules of the Patent and Trademark Office and the registrations to which they are attached shall have the same force and effect as if such certificates and their issue had been specifically authorized by statute.”

1999—Subsecs. (a), (d) to (h). Pub. L. 106-113 substituted “Director” for “Commissioner” wherever appearing.

1998—Subsec. (a). Pub. L. 105-330 struck out second period at end of first sentence.

1988—Subsec. (b). Pub. L. 100-667, § 109(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “A certificate of registration of a mark upon the principal register provided by this chapter shall be prima facie evidence of the validity of the registration, registrant’s ownership of the mark, and of registrant’s exclusive right to use the mark in commerce in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated therein.”

Subsec. (c). Pub. L. 100-667, § 109(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100-667, § 109(2), (4), redesignated former subsec. (c) as (d) and substituted “prescribed fee” for “fee herein provided”. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 100-667, § 109(2), redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 100-667, § 109(2), (5), redesignated former subsec. (e) as (f) and substituted “prescribed fee” for “fee required by law”. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 100-667, § 109(2), redesignated former subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 100-667, § 109(2), (6), redesignated former subsec. (g) as (h) and substituted “prescribed fee” for “required fee”.

1975—Subsecs. (a), (c) to (f). Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

1962—Subsec. (a). Pub. L. 87-772 substituted “signature placed” for “name printed”, and struck out provisions requiring an attestation by an assistant commissioner or by one of the law examiners designated by the Commissioner, together with printed copies of the

drawing and statement of the applicant, to be kept in books for that purpose.

Subsec. (d). Pub. L. 87-772, among other changes, removed the requirement of a fee in connection with the voluntary surrender or cancellation of a registration.

Subsec. (e). Pub. L. 87-772 substituted “an employee of the Office” for “a chief of division”, among other changes.

Subsec. (f). Pub. L. 87-772, among other changes, struck out “, signed by the Commissioner and sealed with the seal of the Patent Office” after “nature of such mistake”.

1950—Subsec. (a). Act Aug. 17, 1950, made it unnecessary to include in the certificate a statement of the applicant.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105-330, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1058. Duration, affidavits and fees

(a) Time periods for required affidavits

Each registration shall remain in force for 10 years, except that the registration of any mark shall be canceled by the Director unless the owner of the registration files in the United States Patent and Trademark Office affidavits that meet the requirements of subsection (b), within the following time periods:

(1) Within the 1-year period immediately preceding the expiration of 6 years following the date of registration under this chapter or the date of the publication under section 1062(c) of this title.

(2) Within the 1-year period immediately preceding the expiration of 10 years following the date of registration, and each successive 10-year period following the date of registration.

(3) The owner may file the affidavit required under this section within the 6-month grace

period immediately following the expiration of the periods established in paragraphs (1) and (2), together with the fee described in subsection (b) and the additional grace period surcharge prescribed by the Director.

(b) Requirements for affidavit

The affidavit referred to in subsection (a) shall—

(1)(A) state that the mark is in use in commerce;

(B) set forth the goods and services recited in the registration on or in connection with which the mark is in use in commerce;

(C) be accompanied by such number of specimens or facsimiles showing current use of the mark in commerce as may be required by the Director; and

(D) be accompanied by the fee prescribed by the Director; or

(2)(A) set forth the goods and services recited in the registration on or in connection with which the mark is not in use in commerce;

(B) include a showing that any nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark; and

(C) be accompanied by the fee prescribed by the Director.

(c) Deficient affidavit

If any submission filed within the period set forth in subsection (a) is deficient, including that the affidavit was not filed in the name of the owner of the registration, the deficiency may be corrected after the statutory time period, within the time prescribed after notification of the deficiency. Such submission shall be accompanied by the additional deficiency surcharge prescribed by the Director.

(d) Notice of requirement

Special notice of the requirement for such affidavit shall be attached to each certificate of registration and notice of publication under section 1062(c) of this title.

(e) Notification of acceptance or refusal

The Director shall notify any owner who files any affidavit required by this section of the Director's acceptance or refusal thereof and, in the case of a refusal, the reasons therefor.

(f) Designation of resident for service of process and notices

If the owner is not domiciled in the United States, the owner may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the last designated address, or if the owner does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings af-

fecting the mark, such notices or process may be served on the Director.

(July 5, 1946, ch. 540, title I, § 8, 60 Stat. 431; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 97-247, § 8, Aug. 27, 1982, 96 Stat. 320; Pub. L. 100-667, title I, § 110, Nov. 16, 1988, 102 Stat. 3939; Pub. L. 105-330, title I, § 105, Oct. 30, 1998, 112 Stat. 3066; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4732(b)(1)(B), (C)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583; Pub. L. 107-273, div. C, title III, § 13207(b)(3), Nov. 2, 2002, 116 Stat. 1906; Pub. L. 111-146, § 3(d)(1), Mar. 17, 2010, 124 Stat. 67.)

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, § 12, 33 Stat. 727.

AMENDMENTS

2010—Pub. L. 111-146 amended section generally. Prior to amendment, section related to duration of registrations, affidavits of continuing use, grace period for submissions and correction of deficiencies, certain notice requirements related to affidavits, and designation of resident for service of process and notices.

2002—Subsec. (f). Pub. L. 107-273 amended subsec. (f) generally. Prior to amendment, text read as follows: “If the registrant is not domiciled in the United States, the registrant shall designate by a written document filed in the Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Director.”

1999—Subsecs. (a) to (c). Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(b)(1)(B)], substituted “Director” for “Commissioner” wherever appearing.

Subsec. (e). Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(b)(1)(B), (C)], amended subsec. (e) identically, substituting “Director” for “Commissioner”.

Subsec. (f). Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(b)(1)(B)], substituted “Director” for “Commissioner”.

1998—Pub. L. 105-330 amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (c) relating to affidavits of continuing use, registrations published under other provisions of law, and notification of acceptance or refusal of affidavits.

1988—Subsec. (a). Pub. L. 100-667 substituted “ten” for “twenty” and “setting forth those goods or services recited in the registration on or in connection with which the mark is in use in commerce and attaching to the affidavit a specimen or facsimile showing current use of the mark, or showing that any” for “showing that said mark is in use in commerce or showing that its”.

1982—Subsecs. (a), (b). Pub. L. 97-247 struck out “still” after “showing that said mark is”, and inserted “in commerce” after “use”.

1975—Subsecs. (a), (b). Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-330 effective on the date that is 1 year after Oct. 30, 1998, see section 110 of Pub. L. 105-330, set out as a note under section 1051 of this title.

Pub. L. 105-330, title I, § 109(a), Oct. 30, 1998, 112 Stat. 3069, provided that: “The provisions of section 8 of the Trademark Act of 1946 [15 U.S.C. 1058], as amended by section 105 of this Act, shall apply to a registration for trademark issued or renewed for a 20-year term, if the expiration date of the registration is on or after the effective date of this Act [probably should be “this title”, see section 110 of Pub. L. 105-330, set out as an Effective Date of 1998 Amendment note under section 1051 of this title].”

For provisions relating to applicability of amendment by Pub. L. 105-330 to applications for registration of trademarks, see section 109(b) of Pub. L. 105-330, set out as a note under section 1051 of this title.

Pub. L. 105-330, title I, § 109(c), Oct. 30, 1998, 112 Stat. 3069, provided that: “The provisions of section 8 of the Trademark Act of 1946 [15 U.S.C. 1058], as amended by section 105 of this Act, shall apply to the filing of an affidavit if the sixth or tenth anniversary of the registration, or the sixth anniversary of publication of the registration under section 12(c) of the Trademark Act of 1946 [15 U.S.C. 1062(c)], for which the affidavit is filed is on or after the effective date of this Act [probably should be “this title”, see section 110 of Pub. L. 105-330, set out as an Effective Date of 1998 Amendment note under section 1051 of this title].”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective six months after Aug. 27, 1982, see section 17(c) of Pub. L. 97-247, set out as a note under section 294 of Title 35, Patents.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, and saving clause, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES TO TRADEMARK ACT OF 1946

Pub. L. 105-330, title I, § 102, Oct. 30, 1998, 112 Stat. 3064, provided that: “For purposes of this title [see Short Title of 1998 Amendment note set out under section 1051 of this title], the Act entitled ‘An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes’, approved July 5, 1946 (15 U.S.C. 1051 et seq.), shall be referred to as the ‘Trademark Act of 1946’.”

PENDING APPLICATIONS

Act July 5, 1946, ch. 540, title XI, § 51, as added Nov. 16, 1988, Pub. L. 100-667, title I, § 135, 102 Stat. 3948, provided that: “All certificates of registration based upon applications for registration pending in the Patent and Trademark Office on the effective date of the Trademark Law Revision Act of 1988 [see Effective Date of 1988 Amendment note set out under section 1051 of this title] shall remain in force for a period of 10 years.”

§ 1059. Renewal of registration**(a) Period of renewal; time for renewal**

Subject to the provisions of section 1058 of this title, each registration may be renewed for periods of 10 years at the end of each successive 10-year period following the date of registration upon payment of the prescribed fee and the filing of a written application, in such form as may be prescribed by the Director. Such application may be made at any time within 1 year before the end of each successive 10-year period for which the registration was issued or renewed, or it may be made within a grace period of 6 months after the end of each successive 10-year period, upon payment of a fee and surcharge prescribed therefor. If any application filed under this section is deficient, the deficiency may be corrected within the time prescribed after notification of the deficiency, upon payment of a surcharge prescribed therefor.

(b) Notification of refusal of renewal

If the Director refuses to renew the registration, the Director shall notify the registrant of the Commissioner's¹ refusal and the reasons therefor.

(c) Designation of resident for service of process and notices

If the registrant is not domiciled in the United States the registrant may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the registrant does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.

(July 5, 1946, ch. 540, title I, § 9, 60 Stat. 431; Pub. L. 87-772, § 5, Oct. 9, 1962, 76 Stat. 770; Pub. L. 100-667, title I, § 111, Nov. 16, 1988, 102 Stat. 3939; Pub. L. 105-330, title I, § 106, Oct. 30, 1998, 112 Stat. 3067; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4732(b)(1)(B), (C)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583; Pub. L. 107-273, div. C, title III, § 13207(b)(4), Nov. 2, 2002, 116 Stat. 1907.)

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, § 12, 33 Stat. 727.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107-273 amended subsec. (c) generally. Prior to amendment, text read as follows: "If the registrant is not domiciled in the United States, the registrant shall designate by a written document filed in the Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be

served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Director."

1999—Subsec. (a). Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(b)(1)(B)], substituted "Director" for "Commissioner".

Subsec. (b). Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(b)(1)(B), (C)], amended subsec. (b) identically, substituting "Director" for "Commissioner" in two places.

Subsec. (c). Pub. L. 106-113, § 1000(a)(9) [title IV, § 4732(b)(1)(B)], substituted "Director" for "Commissioner".

1998—Pub. L. 105-330 amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (c) relating to period of renewal and time for renewal, notification of refusal of renewal, and applicants for renewal not domiciled in the United States.

1988—Subsec. (a). Pub. L. 100-667, § 111(1), substituted "ten" for "twenty".

Subsec. (c). Pub. L. 100-667, § 111(2), substituted "1051(e)" for "1051(d)".

1962—Pub. L. 87-772 designated existing provisions as subsecs. (a) and (c), added subsec. (b), and among other changes, amended subsec. (a) by substituting provisions requiring a verified application specifying the goods or services recited in the registration on or in connection with which the mark is still in use in commerce and having attached a specimen showing current use of the mark, or showing that any nonuse is due to special circumstances which excuse the nonuse and that it's not due to an intention to abandon the mark, for provisions requiring an affidavit by the registrant stating that the mark is still in use in commerce.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-330 effective on the date that is 1 year after Oct. 30, 1998, see section 110 of Pub. L. 105-330, set out as a note under section 1051 of this title.

For provisions relating to applicability of amendment by Pub. L. 105-330 to applications for registration of trademarks, see section 109(b) of Pub. L. 105-330, set out as a note under section 1051 of this title.

Pub. L. 105-330, title I, § 109(d), Oct. 30, 1998, 112 Stat. 3069, provided that: "The amendment made by section 106 [amending this section] shall apply to the filing of an application for renewal of a registration if the expiration date of the registration for which the renewal application is filed is on or after the effective date of this Act [probably should be "this title", see section 110 of Pub. L. 105-330, set out as an Effective Date of 1998 Amendment note under section 1051 of this title]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

RENEWAL UNDER PRIOR ACTS

Renewal of registrations under prior acts, see section 46(b) of act July 5, 1946, set out as a note under section 1051 of this title.

¹ So in original. Probably should be "Director's".

EXTENSION OF TIME FOR RENEWAL BY FOREIGN
REGISTRANT

Act July 17, 1946, ch. 587, 60 Stat. 568, provided for extension of time for renewal by a foreign registrant and expired by its own terms July 17, 1949.

§ 1060. Assignment

(a)(1) A registered mark or a mark for which an application to register has been filed shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Notwithstanding the preceding sentence, no application to register a mark under section 1051(b) of this title shall be assignable prior to the filing of an amendment under section 1051(c) of this title to bring the application into conformity with section 1051(a) of this title or the filing of the verified statement of use under section 1051(d) of this title, except for an assignment to a successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing.

(2) In any assignment authorized by this section, it shall not be necessary to include the good will of the business connected with the use of and symbolized by any other mark used in the business or by the name or style under which the business is conducted.

(3) Assignments shall be by instruments in writing duly executed. Acknowledgment shall be prima facie evidence of the execution of an assignment, and when the prescribed information reporting the assignment is recorded in the United States Patent and Trademark Office, the record shall be prima facie evidence of execution.

(4) An assignment shall be void against any subsequent purchaser for valuable consideration without notice, unless the prescribed information reporting the assignment is recorded in the United States Patent and Trademark Office within 3 months after the date of the assignment or prior to the subsequent purchase.

(5) The United States Patent and Trademark Office shall maintain a record of information on assignments, in such form as may be prescribed by the Director.

(b) An assignee not domiciled in the United States may designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the assignee does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served upon the Director.

(July 5, 1946, ch. 540, title I, §10, 60 Stat. 431; Pub. L. 87-772, §6, Oct. 9, 1962, 76 Stat. 770; Pub.

L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100-667, title I, §112, Nov. 16, 1988, 102 Stat. 3939; Pub. L. 105-330, title I, §107, Oct. 30, 1998, 112 Stat. 3068; Pub. L. 106-43, §6(a), Aug. 5, 1999, 113 Stat. 220; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583; Pub. L. 107-273, div. C, title III, §13207(b)(5), Nov. 2, 2002, 116 Stat. 1907.)

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, §10, 33 Stat. 727.

AMENDMENTS

2002—Subsecs. (a), (b). Pub. L. 107-273 amended subsecs. (a) and (b) generally, in subsec. (a) substituting pars. (1) to (5) for substantially identical undesignated provisions, and in subsec. (b) adding provisions relating to service on Director if assignee does not designate name and address of a person resident in the United States on whom may be served notices or process.

1999—Pub. L. 106-43, §6(a)(2), (3), which directed the amendment of this section by substituting “mark.” for “mark,” in the first sentence and striking out a second period at the end of the third sentence, could not be executed because “mark,” and the second period did not appear subsequent to amendment by Pub. L. 105-330. See 1998 Amendment note below.

Subsec. (a). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(b)(1)(B)], substituted “Director” for “Commissioner” in last sentence.

Pub. L. 106-43, §6(a)(1), which directed the amendment of the penultimate sentence of this section by substituting “assignment” for “subsequent purchase”, was executed by making the substitution for “subsequent purchase” in two places in the penultimate sentence of subsec. (a), after “date of the” and “prior to the”, to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(b)(1)(B)], substituted “Director” for “Commissioner” in last sentence.

1998—Pub. L. 105-330 amended section catchline and text generally. Prior to amendment, text read as follows:

“A registered mark or a mark for which application to register has been filed shall be assignable with the goodwill of the business in which the mark is used, or with that part of the goodwill of the business connected with the use of and symbolized by the mark. However, no application to register a mark under section 1051(b) of this title shall be assignable prior to the filing of the verified statement of use under section 1051(d) of this title, except to a successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing. In any assignment authorized by this section it shall not be necessary to include the goodwill of the business connected with the use of and symbolized by any other mark used in the business or by the name or style under which the business is conducted. Assignments shall be by instruments in writing duly executed. Acknowledgment shall be prima facie evidence of the execution of an assignment and when recorded in the Patent and Trademark Office the record shall be prima facie evidence of execution. An assignment shall be void as against any subsequent purchaser for a valuable consideration without notice, unless it is recorded in the Patent and Trademark Office within three months after the date thereof or prior to such subsequent purchase. A separate record of assignments submitted for recording hereunder shall be maintained in the Patent and Trademark Office.

“An assignee not domiciled in the United States shall be subject to and comply with the provisions of section 1051(e) of this title.”

1988—Pub. L. 100-667 substituted “. However, no application to register a mark under section 1051(b) of this title shall be assignable prior to the filing of the verified statement of use under section 1051(d) of this

title, except to a successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing. In any assignment authorized by this section" for "and in any such assignment" in first par., and "1051(e)" for "1051(d)" in last par.

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

1962—Pub. L. 87-772 substituted provisions which require a separate record of assignments to be kept in the Patent Office, for provisions which required the Commissioner to keep such record, and eliminated provisions permitting the cancellation of any assigned registration at any time if the registered mark is being used by, or with the permission of, the assignee so as to misrepresent the source of the goods or services in connection with which the mark is used.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-330 effective on the date that is 1 year after Oct. 30, 1998, see section 110 of Pub. L. 105-330, set out as a note under section 1051 (d) of this title.

For provisions relating to applicability of amendment by Pub. L. 105-330 to applications for registration of trademarks, see section 109(b) of Pub. L. 105-330, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1061. Execution of acknowledgments and verifications

Acknowledgments and verifications required under this chapter may be made before any person within the United States authorized by law to administer oaths, or, when made in a foreign country, before any diplomatic or consular officer of the United States or before any official authorized to administer oaths in the foreign country concerned whose authority is proved by a certificate of a diplomatic or consular officer of the United States, or apostille of an official designated by a foreign country which, by treaty or convention, accords like effect to apostilles of designated officials in the United States, and shall be valid if they comply with the laws of the state or country where made.

(July 5, 1946, ch. 540, title I, §11, 60 Stat. 432; Pub. L. 97-247, §14(c), Aug. 27, 1982, 96 Stat. 321.)

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §2, 33 Stat. 724; Feb. 18, 1909, ch. 144, 35 Stat. 627.

AMENDMENTS

1982—Pub. L. 97-247 substituted "is" for "shall be" after "whose authority", and inserted ", or apostille of an official designated by a foreign country which, by treaty or convention, accords like effect to apostilles of designated officials in the United States".

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective Aug. 27, 1982, see section 17(a) of Pub. L. 97-247, set out as a note under section 41 of Title 35, Patents.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

§ 1062. Publication

(a) Examination and publication

Upon the filing of an application for registration and payment of the prescribed fee, the Director shall refer the application to the examiner in charge of the registration of marks, who shall cause an examination to be made and, if on such examination it shall appear that the applicant is entitled to registration, or would be entitled to registration upon the acceptance of the statement of use required by section 1051(d) of this title, the Director shall cause the mark to be published in the Official Gazette of the Patent and Trademark Office: *Provided*, That in the case of an applicant claiming concurrent use, or in the case of an application to be placed in an interference as provided for in section 1066 of this title the mark, if otherwise registrable, may be published subject to the determination of the rights of the parties to such proceedings.

(b) Refusal of registration; amendment of application; abandonment

If the applicant is found not entitled to registration, the examiner shall advise the applicant thereof and of the reasons therefor. The applicant shall have a period of six months in which to reply or amend his application, which shall then be reexamined. This procedure may be repeated until (1) the examiner finally refuses registration of the mark or (2) the applicant fails for a period of six months to reply or amend or appeal, whereupon the application shall be deemed to have been abandoned, unless it can be shown to the satisfaction of the Director that the delay in responding was unintentional, whereupon such time may be extended.

(c) Republication of marks registered under prior acts

A registrant of a mark registered under the provisions of the Act of March 3, 1881, or the Act of February 20, 1905, may, at any time prior to the expiration of the registration thereof, upon the payment of the prescribed fee file with the Director an affidavit setting forth those goods stated in the registration on which said mark is in use in commerce and that the registrant

claims the benefits of this chapter for said mark. The Director shall publish notice thereof with a reproduction of said mark in the Official Gazette, and notify the registrant of such publication and of the requirement for the affidavit of use or nonuse as provided for in subsection (b) of section 1058 of this title. Marks published under this subsection shall not be subject to the provisions of section 1063 of this title.

(July 5, 1946, ch. 540, title I, §12, 60 Stat. 432; Pub. L. 87-772, §7, Oct. 9, 1962, 76 Stat. 770; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100-667, title I, §113, Nov. 16, 1988, 102 Stat. 3940; Pub. L. 105-330, title I, §104, Oct. 30, 1998, 112 Stat. 3066; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583.)

REFERENCES IN TEXT

Acts March 3, 1881 and February 20, 1905, referred to in subsec. (c), are acts Mar. 3, 1881, ch. 138, 21 Stat. 502 and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §6, 33 Stat. 726; Mar. 2, 1907, ch. 2573, §2, 34 Stat. 1252.

AMENDMENTS

1999—Pub. L. 106-113 substituted “Director” for “Commissioner” wherever appearing.

1998—Subsec. (b). Pub. L. 105-330 substituted “unintentional” for “unavoidable” in last sentence.

1988—Subsec. (a). Pub. L. 100-667 substituted “prescribed fee” for “fee herein provided”, and “entitled to registration, or would be entitled to registration upon the acceptance of the statement of use required by section 1051(d) of this title, the” for “entitled to registration, the”.

1975—Subsec. (a). Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

1962—Subsec. (a). Pub. L. 87-772 inserted proviso permitting publication of the mark in the case of an applicant claiming concurrent use, or an application to be placed in an interference, if such mark is otherwise registrable, subject to the determination of the rights of the parties.

Subsec. (c). Pub. L. 87-772 inserted “Marks published under” before “this subsection shall not be subject”.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-330 effective on the date that is 1 year after Oct. 30, 1998, see section 110 of Pub. L. 105-330, set out as a note under section 1051 of this title.

For provisions relating to applicability of amendment by Pub. L. 105-330 to applications for registration of trademarks, see section 109(b) of Pub. L. 105-330, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1063. Opposition to registration

(a) Any person who believes that he would be damaged by the registration of a mark upon the principal register, including the registration of any mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title, may, upon payment of the prescribed fee, file an opposition in the Patent and Trademark Office, stating the grounds therefor, within thirty days after the publication under subsection (a) of section 1062 of this title of the mark sought to be registered. Upon written request prior to the expiration of the thirty-day period, the time for filing opposition shall be extended for an additional thirty days, and further extensions of time for filing opposition may be granted by the Director for good cause when requested prior to the expiration of an extension. The Director shall notify the applicant of each extension of the time for filing opposition. An opposition may be amended under such conditions as may be prescribed by the Director.

(b) Unless registration is successfully opposed—

(1) a mark entitled to registration on the principal register based on an application filed under section 1051(a) of this title or pursuant to section 1126 of this title shall be registered in the Patent and Trademark Office, a certificate of registration shall be issued, and notice of the registration shall be published in the Official Gazette of the Patent and Trademark Office; or

(2) a notice of allowance shall be issued to the applicant if the applicant applied for registration under section 1051(b) of this title.

(July 5, 1946, ch. 540, title I, §13, 60 Stat. 433; Pub. L. 87-772, §8, Oct. 9, 1962, 76 Stat. 771; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 93-600, §1, Jan. 2, 1975, 88 Stat. 1955; Pub. L. 97-247, §9(a), Aug. 27, 1982, 96 Stat. 320; Pub. L. 100-667, title I, §114, Nov. 16, 1988, 102 Stat. 3940; Pub. L. 106-43, §2(b), Aug. 5, 1999, 113 Stat. 218; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583; Pub. L. 109-312, §3(b), Oct. 6, 2006, 120 Stat. 1732.)

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §§6, 7, 33 Stat. 726; Mar. 2, 1907, ch. 2573, §2, 34 Stat. 1252.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-312 substituted “the registration of any mark which would be likely to cause dilution by blurring or dilution by tarnishment” for “as a result of dilution”.

1999—Subsec. (a). Pub. L. 106-113 substituted “Director” for “Commissioner” wherever appearing.

Pub. L. 106-43 inserted “, including as a result of dilution under section 1125(c) of this title,” after “principal register” in first sentence.

1988—Pub. L. 100-667 designated existing provisions as subsec. (a), substituted “prescribed fee” for “required fee”, and added subsec. (b).

1982—Pub. L. 97-247 substituted “an” for “a verified” after “required fee, file”, inserted “when requested prior to the expiration of an extension” after “Commissioner for good cause” and struck out provision that an unverified opposition could be filed by a duly authorized attorney, but such opposition would be null and void unless verified by the opposer within a reasonable time after such filing is fixed by the Commissioner.

1975—Pub. L. 93-600 substituted provisions relating to extensions of time for filing opposition upon written request prior to the expiration of the thirty-day period for an additional thirty days, and further extensions for good cause, for provisions relating to extensions of the time for filing opposition for good cause shown.

Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

1962—Pub. L. 87-772 inserted “An opposition may be amended under such conditions as may be prescribed by the Commissioner”, and struck out “notice of” after “file a verified” and “time for filing”.

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of Title 35, Patents.

Amendment by Pub. L. 106-43 effective Aug. 5, 1999, and applicable only to any application for registration filed on or after Jan. 16, 1996, see section 2(e) of Pub. L. 106-43, set out as a note under section 1052 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective six months after Aug. 27, 1982, see section 17(c) of Pub. L. 97-247, set out as a note under section 294 of Title 35, Patents.

EFFECTIVE DATE OF 1975 AMENDMENTS

Section 4 of Pub. L. 93-600 provided that: “This Act [amending this section and sections 1071 and 1117 of this title] shall become effective upon enactment [Jan. 2, 1975], but shall not affect any suit, proceeding, or appeal then pending.”

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1064. Cancellation of registration

A petition to cancel a registration of a mark, stating the grounds relied upon, may, upon pay-

ment of the prescribed fee, be filed as follows by any person who believes that he is or will be damaged, including as a result of a likelihood of dilution by blurring or dilution by tarnishment under section 1125(c) of this title, by the registration of a mark on the principal register established by this chapter, or under the Act of March 3, 1881, or the Act of February 20, 1905:

(1) Within five years from the date of the registration of the mark under this chapter.

(2) Within five years from the date of publication under section 1062(c) of this title of a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905.

(3) At any time if the registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered, or is functional, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 1054 of this title or of subsection (a), (b), or (c) of section 1052 of this title for a registration under this chapter, or contrary to similar prohibitory provisions of such prior Acts for a registration under such Acts, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used. If the registered mark becomes the generic name for less than all of the goods or services for which it is registered, a petition to cancel the registration for only those goods or services may be filed. A registered mark shall not be deemed to be the generic name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the generic name of goods or services on or in connection with which it has been used.

(4) At any time if the mark is registered under the Act of March 3, 1881, or the Act of February 20, 1905, and has not been published under the provisions of subsection (c) of section 1062 of this title.

(5) At any time in the case of a certification mark on the ground that the registrant (A) does not control, or is not able legitimately to exercise control over, the use of such mark, or (B) engages in the production or marketing of any goods or services to which the certification mark is applied, or (C) permits the use of the certification mark for purposes other than to certify, or (D) discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies:

Provided, That the Federal Trade Commission may apply to cancel on the grounds specified in paragraphs (3) and (5) of this section any mark registered on the principal register established by this chapter, and the prescribed fee shall not be required. Nothing in paragraph (5) shall be deemed to prohibit the registrant from using its certification mark in advertising or promoting recognition of the certification program or of

the goods or services meeting the certification standards of the registrant. Such uses of the certification mark shall not be grounds for cancellation under paragraph (5), so long as the registrant does not itself produce, manufacture, or sell any of the certified goods or services to which its identical certification mark is applied.

(July 5, 1946, ch. 540, title I, § 14, 60 Stat. 433; Pub. L. 87-772, § 9, Oct. 9, 1962, 76 Stat. 771; Pub. L. 97-247, § 9(b), Aug. 27, 1982, 96 Stat. 320; Pub. L. 98-620, title I, § 102, Nov. 8, 1984, 98 Stat. 3335; Pub. L. 100-667, title I, § 115, Nov. 16, 1988, 102 Stat. 3940; Pub. L. 105-330, title II, § 201(a)(4), title III, § 301, Oct. 30, 1998, 112 Stat. 3070; Pub. L. 106-43, § 2(c), Aug. 5, 1999, 113 Stat. 218; Pub. L. 109-312, § 3(c), Oct. 6, 2006, 120 Stat. 1732.)

REFERENCES IN TEXT

Acts March 3, 1881 and February 20, 1905, referred to in opening par. and pars. (2) and (4), are acts Mar. 3, 1881, ch. 138, 21 Stat. 502 and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, § 46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, § 13, 33 Stat. 728.

AMENDMENTS

2006—Pub. L. 109-312 substituted “, including as a result of a likelihood of dilution by blurring or dilution by tarnishment under section 1125(c) of this title,” for “, including as a result of dilution under section 1125(c) of this title,” in introductory provisions.

1999—Pub. L. 106-43 inserted “, including as a result of dilution under section 1125(c) of this title,” after “damaged” in introductory provisions.

1998—Pub. L. 105-330, § 301, inserted at end “Nothing in paragraph (5) shall be deemed to prohibit the registrant from using its certification mark in advertising or promoting recognition of the certification program or of the goods or services meeting the certification standards of the registrant. Such uses of the certification mark shall not be grounds for cancellation under paragraph (5), so long as the registrant does not itself produce, manufacture, or sell any of the certified goods or services to which its identical certification mark is applied.”

Par. (3). Pub. L. 105-330, § 201(a)(4), inserted “or is functional,” before “or has been abandoned”.

1988—Pub. L. 100-667, § 115(1), (7), in introductory provisions, inserted “as follows” and substituted “1905:” for “1905—”, and in concluding proviso substituted “paragraphs (3) and (5)” for “subsections (c) and (e)”.

Par. (1). Pub. L. 100-667, § 115(2), substituted “(1) Within” for “(a) within” and “chapter.” for “chapter; or”.

Par. (2). Pub. L. 100-667, § 115(3), substituted “(2) Within” for “(b) within”, and “1905.” for “1905; or”.

Par. (3). Pub. L. 100-667, § 115(4), substituted “(3)” for “(c)” and amended text generally. Prior to amendment, text read as follows: “at any time if the registered mark becomes the common descriptive name of an article or substance, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 1054 of this title or of subsections (a), (b), or (c) of section 1052 of this title for a registration hereunder, or contrary to similar prohibitory provisions of said prior Acts for a registration thereunder, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services in connection with which the mark is used. A registered mark shall not be deemed to be the common descriptive name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the rel-

evant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the common descriptive name of goods or services in connection with which it has been used; or”.

Par. (4). Pub. L. 100-667, § 115(5), substituted “(4) At” for “(d) at”, and “title.” for “title; or”.

Par. (5). Pub. L. 100-667, § 115(6), substituted “(5) At” for “(e) at” and redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively.

1984—Par. (c). Pub. L. 98-620 inserted provision that a registered mark shall not be deemed to be the common descriptive name of goods or services solely because such mark is also used as a name of or to identify a unique product or service, and that the primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the common descriptive name of goods or services in connection with which it has been used.

1982—Pub. L. 97-247 struck out “verified” before “petition to cancel” in provision preceding par. (a).

1962—Pub. L. 87-772 inserted provisions which require a verified petition to cancel a registration, redesignated par. (d) as (e), added par. (d) which is composed of provisions formerly part of par. (c), and in said par. (c), substituted “registrant” for “assignee”, and struck out “on which the patent has expired” before “or has been abandoned”, and “has been assigned and” before “is being used by”.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-43 effective Aug. 5, 1999, and applicable only to any application for registration filed on or after Jan. 16, 1996, see section 2(e) of Pub. L. 106-43, set out as a note under section 1052 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 201(a)(4) of Pub. L. 105-330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105-330, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective six months after Aug. 27, 1982, see section 17(c) of Pub. L. 97-247, set out as a note under section 294 of Title 35, Patents.

FINALITY OF JUDGMENTS PRIOR TO NOVEMBER 8, 1984

Section 104 of title I of Pub. L. 98-620 provided that: “Nothing in this title [amending this section and section 1127 of this title and enacting provisions set out as a note under section 1051 of this title] shall be construed to provide a basis for reopening of any final judgment entered prior to the date of enactment of this title [Nov. 8, 1984].”

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

RESTRICTION ON USE OF FUNDS TO CANCEL REGISTRATION OF TRADEMARKS

For provisions restricting the use of funds authorized to be appropriated to carry out section 41 et seq. of this

title for fiscal year 1980, 1981, or 1982, for the purpose of taking any action under this section with respect to the cancellation of the registration of any mark on the ground that such mark has become the common descriptive name of an article or substance, see section 18 of Pub. L. 96-252, set out as a note under section 57c of this title.

§ 1065. Incontestability of right to use mark under certain conditions

Except on a ground for which application to cancel may be filed at any time under paragraphs (3) and (5) of section 1064 of this title, and except to the extent, if any, to which the use of a mark registered on the principal register infringes a valid right acquired under the law of any State or Territory by use of a mark or trade name continuing from a date prior to the date of registration under this chapter of such registered mark, the right of the owner to use such registered mark in commerce for the goods or services on or in connection with which such registered mark has been in continuous use for five consecutive years subsequent to the date of such registration and is still in use in commerce, shall be incontestable: *Provided*, That—

(1) there has been no final decision adverse to the owner's claim of ownership of such mark for such goods or services, or to the owner's right to register the same or to keep the same on the register; and

(2) there is no proceeding involving said rights pending in the United States Patent and Trademark Office or in a court and not finally disposed of; and

(3) an affidavit is filed with the Director within one year after the expiration of any such five-year period setting forth those goods or services stated in the registration on or in connection with which such mark has been in continuous use for such five consecutive years and is still in use in commerce, and other matters specified in paragraphs (1) and (2) of this section; and

(4) no incontestable right shall be acquired in a mark which is the generic name for the goods or services or a portion thereof, for which it is registered.

Subject to the conditions above specified in this section, the incontestable right with reference to a mark registered under this chapter shall apply to a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905, upon the filing of the required affidavit with the Director within one year after the expiration of any period of five consecutive years after the date of publication of a mark under the provisions of subsection (c) of section 1062 of this title.

The Director shall notify any registrant who files the above-prescribed affidavit of the filing thereof.

(July 5, 1946, ch. 540, title I, §15, 60 Stat. 433; Pub. L. 87-772, §10, Oct. 9, 1962, 76 Stat. 771; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 97-247, §10, Aug. 27, 1982, 96 Stat. 320; Pub. L. 100-667, title I, §116, Nov. 16, 1988, 102 Stat. 3941; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583; Pub. L. 111-146, §3(b), Mar. 17, 2010, 124 Stat. 67.)

REFERENCES IN TEXT

Acts March 3, 1881 and February 20, 1905, referred to in text, are acts Mar. 3, 1881, ch. 138, 21 Stat. 502 and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

AMENDMENTS

2010—Pub. L. 111-146, §3(b)(1), substituted “right of the owner” for “right of the registrant” in introductory provisions.

Par. (1). Pub. L. 111-146, §3(b)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “there has been no final decision adverse to registrant's claim of ownership of such mark for such goods or services, or to registrant's right to register the same or to keep the same on the register; and”.

Par. (2). Pub. L. 111-146, §3(b)(3), inserted “United States” before “Patent and Trademark Office”.

1999—Pub. L. 106-113 substituted “Director” for “Commissioner” in par. (3) and in two places in concluding provisions.

1988—Pub. L. 100-667, in introductory provisions, substituted “paragraphs (3) and (5)” for “subsections (c) and (e)”, in par. (3) “paragraphs” for “subsections”, and in par. (4) “the generic name for the goods or services or a portion thereof, for which it is registered” for “the common descriptive name of any article or substance, patented or otherwise”.

1982—Pub. L. 97-247 substituted “registration” for “the publication” in provision preceding par. (1).

1975—Par. (2). Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

1962—Pub. L. 87-772 substituted “(c) and (e) of section 1064” for “(c) and (d) of section 1064” in provision preceding par. (1), and struck out “or trade name” after “in a mark” in par. (4).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective six months after Aug. 27, 1982, see section 17(c) of Pub. L. 97-247, set out as a note under section 294 of Title 35, Patents.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1066. Interference; declaration by Director

Upon petition showing extraordinary circumstances, the Director may declare that an inter-

ference exists when application is made for the registration of a mark which so resembles a mark previously registered by another, or for the registration of which another has previously made application, as to be likely when used on or in connection with the goods or services of the applicant to cause confusion or mistake or to deceive. No interference shall be declared between an application and the registration of a mark the right to the use of which has become incontestable.

(July 5, 1946, ch. 540, title I, §16, 60 Stat. 434; Pub. L. 87-772, §11, Oct. 9, 1962, 76 Stat. 771; Pub. L. 97-247, §11, Aug. 27, 1982, 96 Stat. 321; Pub. L. 100-667, title I, §117, Nov. 16, 1988, 102 Stat. 3941; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583.)

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, §7, 33 Stat. 726.

AMENDMENTS

1999—Pub. L. 106-113 substituted “Director” for “Commissioner”.

1988—Pub. L. 100-667 substituted “used on or in connection with the goods or services” for “applied to the goods or when used in connection with the services”.

1982—Pub. L. 97-247 substituted “Upon petition showing extraordinary circumstances, the Commissioner may declare that an interference exists when application is made for the registration of a mark which so resembles a mark previously registered by another, or for the registration of which another has previously made application, as to be likely when applied to the goods or when used in connection with the services of the applicant to cause confusion or mistake or to deceive” for “Whenever application is made for the registration of a mark which so resembles a mark previously registered by another, or for the registration of which another has previously made application, as to be likely when applied to the goods or when used in connection with the services of the applicant to cause confusion or mistake or to deceive, the Commissioner may declare that an interference exists”.

1962—Pub. L. 87-772 struck out “purchasers” after “or to deceive”.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-247 effective six months after Aug. 27, 1982, see section 17(c) of Pub. L. 97-247, set out as a note under section 294 of Title 35, Patents.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§1, 2, eff. May

24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1067. Interference, opposition, and proceedings for concurrent use registration or for cancellation; notice; Trademark Trial and Appeal Board

(a) In every case of interference, opposition to registration, application to register as a lawful concurrent user, or application to cancel the registration of a mark, the Director shall give notice to all parties and shall direct a Trademark Trial and Appeal Board to determine and decide the respective rights of registration.

(b) The Trademark Trial and Appeal Board shall include the Director, Deputy¹ Director of the United States Patent and Trademark Office² the Commissioner for Patents, the Commissioner for Trademarks, and administrative trademark judges who are appointed by the Secretary of Commerce, in consultation with the Director.

(c) AUTHORITY OF THE SECRETARY.—The Secretary of Commerce may, in his or her discretion, deem the appointment of an administrative trademark judge who, before August 12, 2008, held office pursuant to an appointment by the Director to take effect on the date on which the Director initially appointed the administrative trademark judge.

(d) DEFENSE TO CHALLENGE OF APPOINTMENT.—It shall be a defense to a challenge to the appointment of an administrative trademark judge on the basis of the judge's having been originally appointed by the Director that the administrative trademark judge so appointed was acting as a de facto officer.

(July 5, 1946, ch. 540, title I, §17, 60 Stat. 434; Pub. L. 85-609, §1(a), Aug. 8, 1958, 72 Stat. 540; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 96-455, §1, Oct. 15, 1980, 94 Stat. 2024; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4716], Nov. 29, 1999, 113 Stat. 1536, 1501A-580; Pub. L. 107-273, div. C, title III, §13203(a)(1), Nov. 2, 2002, 116 Stat. 1902; Pub. L. 110-313, §1(b), Aug. 12, 2008, 122 Stat. 3014.)

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, §7, 33 Stat. 726.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110-313, §1(b)(1), inserted “Deputy Director of the United States Patent and Trademark Office” after “Director,” and substituted “appointed by the Secretary of Commerce, in consultation with the Director” for “appointed by the Director”.

Subsecs. (c), (d). Pub. L. 110-313, §1(b)(2), added subsecs. (c) and (d).

2002—Subsec. (b). Pub. L. 107-273, which directed amendment of subsec. (b) by inserting “the Deputy Commissioner,” after “Commissioner,” could not be executed because “Commissioner,” does not appear in text.

1999—Pub. L. 106-113 amended section generally. Prior to amendment, section read as follows:

“In every case of interference, opposition to registration, application to register as a lawful concurrent user, or application to cancel the registration of a

¹ So in original. Probably should be preceded by “the”.

² So in original. Probably should be followed by a comma.

mark, the Commissioner shall give notice to all parties and shall direct a Trademark Trial and Appeal Board to determine and decide the respective rights of registration.

“The Trademark Trial and Appeal Board shall include the Commissioner, the Deputy Commissioner, the Assistant Commissioners, and members appointed by the Commissioner. Employees of the Patent and Trademark Office and other persons, all of whom shall be competent in trademark law, shall be eligible for appointment as members. Each case shall be heard by at least three members of the Board, the members hearing such case to be designated by the Commissioner.”

1980—Pub. L. 96-455 inserted provisions requiring that the Trademark Trial and Appeal Board include the Deputy Commissioner and members appointed by the Commissioner and provisions that employees of the Patent and Trademark Office and other persons, all of whom shall be competent in trademark law, shall be eligible for appointment as members; and struck out provision that the Board include Patent and Trademark Office employees, designated by the Commissioner and whose qualifications have been approved by the Civil Service Commission as being adequate for appointment to the position of examiner in charge of interferences.

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

1958—Pub. L. 85-609 substituted “a Trademark Trial and Appeal Board” for “the examiner in charge of interferences” in first paragraph, and inserted second paragraph relating to the composition of the Board.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1980 AMENDMENT; BOARD MEMBERSHIP AS OF OCTOBER 15, 1980, UNAFFECTED

Section 2 of Pub. L. 96-455 provided that: “This amendment [amending this section] shall become effective on the date of its enactment [Oct. 15, 1980]. Members of the Trademark Trial and Appeal Board on the date of enactment shall continue to be members under and in accordance with the provisions of section 17 of the Act of July 5, 1946, as amended [this section], in effect immediately preceding the date of enactment.”

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 3 of Pub. L. 85-609 provided that: “This Act [amending this section and sections 1070, 1071, 1092, and 1113 of this title] shall take effect on approval [Aug. 8, 1958]; it shall apply to ex parte appeals taken to the Commissioner prior to the date of approval which have not been heard but shall not apply to any such appeal which has been heard or decided in which event further proceedings may be had as though this Act had not been passed; it shall apply to inter partes cases instituted prior to the date of approval which have not been heard by an examiner of interferences, but shall not apply to any such case which has been heard or decided by an examiner of interferences in which event further proceedings may be had as though this Act had not passed.”

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain

exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

REORGANIZATION PLAN NO. 5 OF 1950

Section 2 of Pub. L. 85-609 provided that: “The provisions of this Act [amending this section and sections 1070, 1071, 1092, and 1113 of this title] shall be subject to Reorganization Plan No. 5 of 1950 (64 Stat. 1263).”

§ 1068. Action of Director in interference, opposition, and proceedings for concurrent use registration or for cancellation

In such proceedings the Director may refuse to register the opposed mark, may cancel the registration, in whole or in part, may modify the application or registration by limiting the goods or services specified therein, may otherwise restrict or rectify with respect to the register the registration of a registered mark, may refuse to register any or all of several interfering marks, or may register the mark or marks for the person or persons entitled thereto, as the rights of the parties under this chapter may be established in the proceedings: *Provided*, That in the case of the registration of any mark based on concurrent use, the Director shall determine and fix the conditions and limitations provided for in subsection (d) of section 1052 of this title. However, no final judgment shall be entered in favor of an applicant under section 1051(b) of this title before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 1057(c) of this title.

(July 5, 1946, ch. 540, title I, §18, 60 Stat. 434; Pub. L. 100-667, title I, §118, Nov. 16, 1988, 102 Stat. 3941; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583.)

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, §§7, 13, 33 Stat. 726, 728.

AMENDMENTS

1999—Pub. L. 106-113 substituted “Director” for “Commissioner” in two places.

1988—Pub. L. 100-667 substituted “the registration, in whole or in part, may modify the application or registration by limiting the goods or services specified therein, may otherwise restrict or rectify with respect to the register” for “or restrict”, and “may refuse” for “or may refuse”, and inserted provisions that no final judgment be entered before mark is registered if applicant cannot prevail without establishing constructive use.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1069. Application of equitable principles in inter partes proceedings

In all inter partes proceedings equitable principles of laches, estoppel, and acquiescence, where applicable may be considered and applied.

(July 5, 1946, ch. 540, title I, § 19, 60 Stat. 434; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100-667, title I, § 119, Nov. 16, 1988, 102 Stat. 3941.)

AMENDMENTS

1988—Pub. L. 100-667 struck out at end “The provisions of this section shall also govern proceedings heretofore begun in the Patent and Trademark Office and not finally determined.”

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1070. Appeals to Trademark Trial and Appeal Board from decisions of examiners

An appeal may be taken to the Trademark Trial and Appeal Board from any final decision of the examiner in charge of the registration of marks upon the payment of the prescribed fee.

(July 5, 1946, ch. 540, title I, § 20, 60 Stat. 435; Pub. L. 85-609, § 1(b), Aug. 8, 1958, 72 Stat. 540.)

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, §§ 8, 13, 33 Stat. 726, 728.

AMENDMENTS

1958—Pub. L. 85-609 substituted “Trademark Trial and Appeal Board” for “Commissioner in person” and “fee” for “fees”, and struck out “of interferences or” after “examiner in charge”.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date and applicability of amendment by Pub. L. 85-609, see section 3 of Pub. L. 85-609, set out as a note under section 1067 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

REORGANIZATION PLAN NO. 5 OF 1950

Amendment by Pub. L. 85-609 as subject to Reorganization Plan No. 5 of 1950, see note set out under section 1067 of this title.

§ 1071. Appeal to courts

(a) Persons entitled to appeal; United States Court of Appeals for the Federal Circuit; waiver of civil action; election of civil action by adverse party; procedure

(1) An applicant for registration of a mark, party to an interference proceeding, party to an opposition proceeding, party to an application to register as a lawful concurrent user, party to a cancellation proceeding, a registrant who has filed an affidavit as provided in section 1058 of this title or section 1141k of this title, or an applicant for renewal, who is dissatisfied with the decision of the Director or Trademark Trial and Appeal Board, may appeal to the United States Court of Appeals for the Federal Circuit thereby waiving his right to proceed under subsection (b) of this section: *Provided*, That such appeal shall be dismissed if any adverse party to the proceeding, other than the Director, shall, within twenty days after the appellant has filed notice of appeal according to paragraph (2) of this subsection, files notice with the Director that he elects to have all further proceedings conducted as provided in subsection (b) of this section. Thereupon the appellant shall have thirty days thereafter within which to file a civil action under subsection (b) of this section, in default of which the decision appealed from shall govern the further proceedings in the case.

(2) When an appeal is taken to the United States Court of Appeals for the Federal Circuit, the appellant shall file in the United States Patent and Trademark Office a written notice of appeal directed to the Director, within such time after the date of the decision from which the appeal is taken as the Director prescribes, but in no case less than 60 days after that date.

(3) The Director shall transmit to the United States Court of Appeals for the Federal Circuit a certified list of the documents comprising the record in the United States Patent and Trademark Office. The court may request that the Director forward the original or certified copies of such documents during pendency of the appeal. In an ex parte case, the Director shall submit to that court a brief explaining the grounds for the decision of the United States Patent and Trademark Office, addressing all the issues involved in the appeal. The court shall, before hearing an appeal, give notice of the time and place of the hearing to the Director and the parties in the appeal.

(4) The United States Court of Appeals for the Federal Circuit shall review the decision from which the appeal is taken on the record before the United States Patent and Trademark Office. Upon its determination the court shall issue its mandate and opinion to the Director, which shall be entered of record in the United States Patent and Trademark Office and shall govern the further proceedings in the case. However, no final judgment shall be entered in favor of an applicant under section 1051(b) of this title before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 1057(c) of this title.

(b) Civil action; persons entitled to; jurisdiction of court; status of Director; procedure

(1) Whenever a person authorized by subsection (a) of this section to appeal to the United States Court of Appeals for the Federal Circuit is dissatisfied with the decision of the Director or Trademark Trial and Appeal Board, said person may, unless appeal has been taken to said United States Court of Appeals for the Federal Circuit, have remedy by a civil action if commenced within such time after such decision, not less than sixty days, as the Director appoints or as provided in subsection (a) of this section. The court may adjudge that an applicant is entitled to a registration upon the application involved, that a registration involved should be canceled, or such other matter as the issues in the proceeding require, as the facts in the case may appear. Such adjudication shall authorize the Director to take any necessary action, upon compliance with the requirements of law. However, no final judgment shall be entered in favor of an applicant under section 1051(b) of this title before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 1057(c) of this title.

(2) The Director shall not be made a party to an inter partes proceeding under this subsection, but he shall be notified of the filing of the complaint by the clerk of the court in which it is filed and shall have the right to intervene in the action.

(3) In any case where there is no adverse party, a copy of the complaint shall be served on the Director, and, unless the court finds the expenses to be unreasonable, all the expenses of the proceeding shall be paid by the party bringing the case, whether the final decision is in favor of such party or not. In suits brought hereunder, the record in the United States Patent and Trademark Office shall be admitted on motion of any party, upon such terms and conditions as to costs, expenses, and the further cross-examination of the witnesses as the court imposes, without prejudice to the right of any party to take further testimony. The testimony and exhibits of the record in the United States Patent and Trademark Office, when admitted, shall have the same effect as if originally taken and produced in the suit.

(4) Where there is an adverse party, such suit may be instituted against the party in interest as shown by the records of the United States Patent and Trademark Office at the time of the decision complained of, but any party in inter-

est may become a party to the action. If there are adverse parties residing in a plurality of districts not embraced within the same State, or an adverse party residing in a foreign country, the United States District Court for the Eastern District of Virginia shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs.

(July 5, 1946, ch. 540, title I, § 21, 60 Stat. 435; July 19, 1952, ch. 950, § 2, 66 Stat. 814; Pub. L. 85-609, § 1(c), Aug. 8, 1958, 72 Stat. 540; Pub. L. 87-772, § 12, Oct. 9, 1962, 76 Stat. 771; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 93-600, § 2, Jan. 2, 1975, 88 Stat. 1955; Pub. L. 97-164, title I, § 162(1), Apr. 2, 1982, 96 Stat. 49; Pub. L. 98-620, title IV, § 414(b), Nov. 8, 1984, 98 Stat. 3363; Pub. L. 100-667, title I, § 120, Nov. 16, 1988, 102 Stat. 3942; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583; Pub. L. 111-146, § 3(c), Mar. 17, 2010, 124 Stat. 67; Pub. L. 112-29, § 9(a), Sept. 16, 2011, 125 Stat. 316.)

CODIFICATION

Pub. L. 93-596, which provided for the substitution of "Patent and Trademark Office" for "Patent Office" each time appearing in this chapter, became effective Jan. 2, 1975, as did Pub. L. 93-600, which in the course of amending subsec. (a)(3) and (4) of this section, referred merely to "Patent Office". "Patent and Trademark Office" has been substituted for "Patent Office" in subsec. (a)(3) and (4) on authority of Pub. L. 93-596.

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §§ 9, 22, 33 Stat. 727, 729; Mar. 2, 1929, ch. 488, § 2(b), 45 Stat. 1478.

AMENDMENTS

2011—Subsec. (b)(4). Pub. L. 112-29 substituted "United States District Court for the Eastern District of Virginia" for "United States District Court for the District of Columbia".

2010—Subsec. (a)(1). Pub. L. 111-146, § 3(c)(2), inserted "or section 1141k of this title" after "section 1058 of this title".

Subsec. (a)(2) to (4). Pub. L. 111-146, § 3(c)(1), inserted "United States" before "Patent and Trademark Office" wherever appearing.

Subsec. (b)(3). Pub. L. 111-146, § 3(c)(1), inserted "United States" before "Patent and Trademark Office" in two places.

Subsec. (b)(4). Pub. L. 111-146, § 3(c)(1), (3), inserted "United States" before "Patent and Trademark Office" and substituted "If there are" for "If there be".

1999—Pub. L. 106-113 substituted "Director" for "Commissioner" wherever appearing.

1988—Subsec. (a)(1). Pub. L. 100-667, § 120(1), made technical amendments to references in the original act to subsection (b) of this section resulting in no change in text, and substituted "paragraph (2) of this subsection" for "subsection (a)(2) of this section" and "action under subsection" for "action under said subsection".

Subsec. (a)(4). Pub. L. 100-667, § 120(2), inserted provision that no final judgment be entered before mark is registered if applicant cannot prevail without establishing constructive use.

Subsec. (b)(1). Pub. L. 100-667, § 120(3), made technical amendments to references in the original act to subsection (a) of this section resulting in no change in text and inserted provision that no final judgment be en-

tered before mark is registered if applicant cannot prevail without establishing constructive use.

Subsec. (b)(3). Pub. L. 100-667, §120(4), amended first sentence generally. Prior to amendment, first sentence read as follows: "In all cases where there is no adverse party, a copy of the complaint shall be served on the Commissioner; and all the expenses of the proceedings shall be paid by the party bringing them, whether the final decision is in his favor or not."

1984—Subsec. (a)(2). Pub. L. 98-620 substituted provisions requiring the appellant to file a written notice of appeal in the Patent and Trademark Office directed to the Commissioner for provisions requiring the appellant to file the notice of appeal with the Commissioner, and struck out provision which required the notice of appeal to specify the party or parties taking the appeal, to designate the decision or part thereof appealed from, and to state that the appeal was being taken to the United States Court of Appeals for the Federal Circuit.

Subsec. (a)(3). Pub. L. 98-620 substituted provisions requiring the Commissioner to transmit to the United States Court of Appeals for the Federal Circuit a certified list of the documents comprising the record in the Patent and Trademark Office for provisions which required the Commissioner to transmit to the court certified copies of all the necessary original papers and evidence in the case specified by the appellant, and any additional papers and evidence specified by the appellee, and inserted provision that the court may request that the Commissioner forward the original or certified copies of such documents during the pendency of the appeal.

Subsec. (a)(4). Pub. L. 98-620 substituted provisions requiring the court to review the decision from which the appeal is taken on the record before the Patent and Trademark Office, and, upon its determination, to issue its mandate and opinion to the Commissioner for provisions which required the court to decide such appeal on the evidence produced before the Patent and Trademark Office and to return to the Commissioner a certificate of its proceedings and decision.

1982—Subsecs. (a)(1), (2), (b)(1). Pub. L. 97-164 substituted "United States Court of Appeals for the Federal Circuit" for "United States Court of Customs and Patent Appeals" and "Court of Customs and Patent Appeals" wherever appearing.

1975—Subsec. (a)(2). Pub. L. 93-600 substituted provisions relating to filing of notice of appeal with the Commissioner and the contents of such notice of appeal, for provisions relating to giving notice of appeal to the Commissioner and requiring filing in the Patent Office reasons for appeal.

Subsec. (a)(3). Pub. L. 93-600 inserted provision requiring the Commissioner to furnish the court with a brief explaining the grounds of the decision of the Office.

Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

Subsec. (a)(4). Pub. L. 93-600 substituted "decide" for "hear and determine" and struck out "Upon its determination," before "the court shall return" and provision requiring the decision to be confined to the points set forth in the reasons of appeal.

Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office" in two places.

Subsec. (b)(3), (4). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

1962—Pub. L. 87-772 amended section generally, and among other changes, incorporated with necessary changes in language, the various provisions of Title 35, Patents, relating to the procedure of appeals to the Court of Customs and Patent Appeals and review by civil action in patent cases, which had previously been incorporated by reference only.

1958—Pub. L. 85-609 authorized appeals by persons dissatisfied with the decision of the Trademark Trial and Appeal Board, and substituted "Trademark Trial and Appeal Board" for "Commissioner" in proviso.

1952—Act July 19, 1952, substituted references to new title 35 for repealed section of title 35.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112-29, §9(b), Sept. 16, 2011, 125 Stat. 316, provided that: "The amendments made by this section [amending this section and sections 32, 145, 146, 154, and 293 of Title 35, Patents] shall take effect on the date of the enactment of this Act [Sept. 16, 2011] and shall apply to any civil action commenced on or after that date."

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 applicable to proceedings pending in the Patent and Trademark Office on Nov. 8, 1984, and to appeals pending in the United States Court of Appeals for the Federal Circuit on that date, see section 414(c) of Pub. L. 98-620, set out as a note under section 142 of Title 35, Patents.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by Pub. L. 93-600 effective Jan. 2, 1975, but not to affect any suit, proceeding, or appeal then pending, see section 4 of Pub. L. 93-600, set out as a note under section 1063 of this title.

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date and applicability of amendment by Pub. L. 85-609, see section 3 of Pub. L. 85-609, set out as a note under section 1067 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

REORGANIZATION PLAN NO. 5 OF 1950

Amendment by Pub. L. 85-609 as subject to Reorganization Plan No. 5 of 1950, see note set out under section 1067 of this title.

§1072. Registration as constructive notice of claim of ownership

Registration of a mark on the principal register provided by this chapter or under the Act of March 3, 1881, or the Act of February 20, 1905, shall be constructive notice of the registrant's claim of ownership thereof.

(July 5, 1946, ch. 540, title I, §22, 60 Stat. 435.)

REFERENCES IN TEXT

Acts March 3, 1881, and February 20, 1905, referred to in text, are acts Mar. 3, 1881, ch. 138, 21 Stat. 502 and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

SUBCHAPTER II—THE SUPPLEMENTAL REGISTER

§ 1091. Supplemental register**(a) Marks registrable**

In addition to the principal register, the Director shall keep a continuation of the register provided in paragraph (b) of section 1 of the Act of March 19, 1920, entitled “An Act to give effect to certain provisions of the convention for the protection of trademarks and commercial names, made and signed in the city of Buenos Aires, in the Argentine Republic, August 20, 1910, and for other purposes”, to be called the supplemental register. All marks capable of distinguishing applicant’s goods or services and not registrable on the principal register provided in this chapter, except those declared to be unregistrable under subsections (a), (b), (c), (d), and (e)(3) of section 1052 of this title, which are in lawful use in commerce by the owner thereof, on or in connection with any goods or services may be registered on the supplemental register upon the payment of the prescribed fee and compliance with the provisions of subsections (a) and (e) of section 1051 of this title so far as they are applicable. Nothing in this section shall prevent the registration on the supplemental register of a mark, capable of distinguishing the applicant’s goods or services and not registrable on the principal register under this chapter, that is declared to be unregistrable under section 1052(e)(3) of this title, if such mark has been in lawful use in commerce by the owner thereof, on or in connection with any goods or services, since before December 8, 1993.

(b) Application and proceedings for registration

Upon the filing of an application for registration on the supplemental register and payment of the prescribed fee the Director shall refer the application to the examiner in charge of the registration of marks, who shall cause an examination to be made and if on such examination it shall appear that the applicant is entitled to registration, the registration shall be granted. If the applicant is found not entitled to registration the provisions of subsection (b) of section 1062 of this title shall apply.

(c) Nature of mark

For the purposes of registration on the supplemental register, a mark may consist of any trademark, symbol, label, package, configuration of goods, name, word, slogan, phrase, surname, geographical name, numeral, device, any matter that as a whole is not functional, or any combination of any of the foregoing, but such

mark must be capable of distinguishing the applicant’s goods or services.

(July 5, 1946, ch. 540, title II, §23, 60 Stat. 435; Pub. L. 87-772, §13, Oct. 9, 1962, 76 Stat. 773; Pub. L. 100-667, title I, §121, Nov. 16, 1988, 102 Stat. 3942; Pub. L. 103-182, title III, §333(b), Dec. 8, 1993, 107 Stat. 2114; Pub. L. 105-330, title II, §201(a)(5), Oct. 30, 1998, 112 Stat. 3070; Pub. L. 106-43, §6(b), Aug. 5, 1999, 113 Stat. 220; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583; Pub. L. 107-273, div. C, title III, §13207(b)(6), Nov. 2, 2002, 116 Stat. 1908.)

REFERENCES IN TEXT

Paragraph (b) of section 1 of the Act of March 19, 1920, referred to in subsec. (a), is paragraph (b) of section 1 of act Mar. 19, 1920, ch. 104, 41 Stat. 533, which was classified to section 121(b) of this title, and repealed by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444, insofar as inconsistent.

PRIOR PROVISIONS

Acts Mar. 19, 1920, ch. 104, §1, 41 Stat. 533; Apr. 11, 1930, ch. 132, §4, 46 Stat. 155; June 10, 1938, ch. 332, §2, 52 Stat. 638.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107-273 struck out second comma after “numeral”.

1999—Subsec. (a). Pub. L. 106-113 substituted “Director” for “Commissioner”.

Pub. L. 106-43 substituted “trademarks” for “trade-marks”.

Subsec. (b). Pub. L. 106-113 substituted “Director” for “Commissioner”.

1998—Subsec. (c). Pub. L. 105-330 substituted “, device, any matter that as a whole is not functional,” for “or device”.

1993—Subsec. (a). Pub. L. 103-182 substituted “(d), and (e)(3)” for “and (d)” and inserted at end “Nothing in this section shall prevent the registration on the supplemental register of a mark, capable of distinguishing the applicant’s goods or services and not registrable on the principal register under this chapter, that is declared to be unregistrable under section 1052(e)(3) of this title, if such mark has been in lawful use in commerce by the owner thereof, on or in connection with any goods or services, since before December 8, 1993.”

1988—Pub. L. 100-667, §121(6), struck out undesignated concluding par. which read as follows: “Upon a proper showing by the applicant that he requires domestic registration as a basis for foreign protection of his mark, the Commissioner may waive the requirement of a full year’s use and may grant registration forthwith.”

Subsec. (a). Pub. L. 100-667, §121(1), (4), designated first par. as subsec. (a), made technical amendment to reference in the original act to subsections (a), (b), (c), and (d) of section 1052 of this title resulting in no change in text, substituted “are in lawful use in commerce by the owner thereof, on” for “have been in lawful use in commerce by the proprietor thereof, upon”, struck out “for the year preceding the filing of the application” after “any goods and services”, and inserted “subsections (a) and (e) of” before “section 1051”.

Subsec. (b). Pub. L. 100-667, §121(2), (5), designated second par. as subsec. (b) and substituted “prescribed fee” for “fee herein provided”.

Subsec. (c). Pub. L. 100-667, §121(3), designated third par. as subsec. (c).

1962—Pub. L. 87-772 struck out “has begun the lawful use of his mark in foreign commerce and that he” before “requires domestic registration” in last par.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731]